DOCUMENT RESUME

ED 123 758 EA 008 312

TITLE Fiscal Amendments of 1976. Report Together with Additional, Supplemental, and Minority Views Including Cost Estimate and Comparison of the Congressional Budget Office, to Accompany H.R. 13367. 94th Congress, Second Session. Report 94-1165, Part 1.

INSTITUTION Congress of the U.S., Washington, D.C. House.

PUB DATE 15 May 76

NOTE 118p.; Not available in hard copy due to type face and size in parts of original document

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.

DESCRIPTORS Accountability; Citizen Participation; Civil Rights; Economic Disadvantagement; Federal Aid; Federal Government; *Federal Legislation; Federal State Relationship; Fiscal Capacity; *Local Government; Program Effectiveness; *Program Evaluation; Resource Allocations; *Revenue Sharing; *State Federal Aid; State Government; Tax Allocation; Tax Effort

ABSTRACT

H.R. 13367, the Fiscal Assistance Amendments of 1976, is designed to extend and amend the State and Local Fiscal Assistance Act of 1972, commonly known as the "revenue sharing" Act. This program is intended to provide general financial assistance to help support public services that are the responsibility of the states and their general purpose units of local government. Since this assistance is not restricted to any particular services or functions, the Committee on Government Operations has included provisions intended to assure that citizens are afforded an opportunity to participate in the determination of the use of these funds by their state and local governments. The committee has also included specific provisions to assure that the funds are expended without discrimination, and that financial accounts are examined by outside auditors. This legislation, like the 1972 Act, establishes a program of limited duration so Congress may decide in the light of further experience and new developments whether or not it should be continued. (Author)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED123758

94th Congress } HOUSE OF REPRESENTATIVES { Rept. 94–
2d Session } { 1165, Part 1

FISCAL AMENDMENTS OF 1976

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

May 15, 1976.—Ordered to be printed

Mr. Brooks, from the Committee on Government Operations,
submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, AND MINORITY VIEWS

[Including cost estimate and comparison of the Congressional Budget Office]

[To accompany H.R. 13367]

The Committee on Government Operations, to whom was referred the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments made by the Committee on Government Operations strike out the matter printed in linetype and insert the matter printed in italic type in the reported bill.

I. Statement of Purpose

H.R. 13367, the Fiscal Assistance Amendments of 1976, is designed to extend and amend the State and Local Fiscal Assistance Act of 1972, commonly known as the "revenue sharing" Act. This program is intended to provide general financial assistance to help support public services that are the responsibility of the States and their general purpose units of local government. Since this assistance is not restricted to any particular services or functions, the Committee has included provisions intended to assure that citizens are afforded an opportunity to participate in the determination of the use of these funds by their State and local governments. The Committee has also included specific provisions to assure that the funds are expended without discrimination, and that financial accounts are examined by outside auditors. This legislation, like the 1972 Act, establishes a program of limited duration so

EA 008 312

BEST COPY AVAILABLE

that Congress may decide in the light of further experience and new developments whether or not it should be continued.

II. Background

A. LEGISLATIVE HISTORY OF THE 1972 ACT

The State and Local Fiscal Assistance Act of 1972 was signed into law on October 22, 1972, after a long period of debate. When this type of unconditional Federal aid was first proposed in 1964 by Dr. Walter Heller, then Chairman of the Council of Economic Advisers, it was intended to stimulate the economy by earmarking an anticipated Federal surplus for distribution to the States. Payments were to be made only to State governments. The States, at their discretion, could allocate a portion of the funds to local governments.

It subsequently became evident that in order for such legislation to be politically acceptable, it would have to provide for direct payments to at least the larger local governments. As finally enacted, the Act guaranteed automatic payments, without applications, to all States and to virtually all general purpose local governments.

The Act provided $30.2 billion for the five calendar years 1972 through 1976, with payments commencing at $5.3 billion for 1972 and increasing annually to a level of $6.5 billion in 1976. The first payments, made retroactive for all of 1972, were sent to recipients in December 1972.

The funds are distributed among the States and local governments on the basis of formulas that take in account their varying economic circumstances. Two-thirds of the total is distributed to local governments and one-third to the States, because the local units were viewed as having the more pressing financial problems and more limited taxing capabilities.

The legislative history indicates that Congress enacted this program with a variety of perceptions of its objectives. For example, some Members viewed the program as purely a fiscal device to ease the tax burden of State and especially local governments by sharing revenue from the progressive and productive Federal income tax; others saw it as a means of decentralizing political power in our federal system. Some believed the program was intended to supplement existing Federal categorical (special purpose) assistance; others viewed it as a partial substitute for existing categorical programs. Some Members thought the program was intended to expand the activities of local and State governments to provide important but unmet public needs; others saw it as a means of reducing or stabilizing local property taxes.

The program established by the 1972 Act is widely identified as "revenue sharing," even though the law does not use that term and appropriates specified amounts from the general fund irrespective of the size of Federal revenues.

B. FISCAL POSITION OF STATE AND LOCAL GOVERNMENTS

Federal assistance to State and local governments has increased dramatically during the past 11 years, from less than $11 billion in

FY 1965 to almost $53 billion in FY 1975; a further increase to nearly $56 billion is estimated for FY 1976. In these 11 years, Federal aid to State and local governments almost doubled as a proportion of total Federal outlays (from 9 to 17 percent), and the Federal share of State and local expenditures increased from 15 to 23 percent.

Increases in State and local government tax revenues in recent years have been obtained primarily by rate increases. This has occurred because most State and local revenues are derived from sources that do not increase rapidly as personal income levels rise. In 1974, these governments obtained 72 percent of their total tax revenues from property and sales tax—sources whose yields rise only proportionately, or less, with increases in income levels. Income taxes—whose yields rise at a relatively faster rate as income levels increase—accounted for only 19 percent of their total tax receipts.

The older central cities of the Nation have experienced a disproportionate share of fiscal problems in recent years. These cities have lost large numbers of middle and higher income residents to less crowded suburbs and have usually been frustrated in efforts to adjust their political boundaries to incorporate the more affluent suburban communities that surround them. Consequently, the central cities have been left with a high portion of low income and high cost residents. The financial plight of many central cities is aggravated by the need to raise taxes to compensate for a dwindling population and tax base, thereby creating a vicious cycle by accelerating the further exodus of higher income residents and business enterprises.

The fiscal condition of State governments is generally much less perilous. Although many States have experienced very significant changes in their economic growth patterns, they have generally been in a much better position to adjust their tax sources as these changes occur. Consequently, they are generally experiencing less serious fiscal difficulties than the urban cities.

C. FISCAL SIGNIFICANCE OF PROGRAM

At the present time, the revenue sharing program accounts for almost 12 percent of total Federal assistance payments to State and local governments.

Approximately 38,000 units of local government, in addition to the States, receive revenue sharing allocations which range, on an annual basis, from the minimum payment of $200 to $263 million in the case of New York City. While these allocations constitute a very high proportion of the budgets for some small jurisdictions, on an overall basis the program provides approximately 5 percent of local expenditures and 2 percent of State government expenditures. These payments, however, assume much greater significance when compared with tax revenues. Shared revenues are equal to approximately 3 percent of State tax collections and 12 percent of the taxes raised by general purpose local governments. In some instances, local governments receive allocations equal to 50 percent or more of their total tax revenues.

Because of imbalances between service needs and financial resources among States, and also among local communities, the distribution formulas of most Federal assistance programs are designed to be "equalizing"—this is, to pay a proportionately larger share of benefits to the more needy States and localities.

The revenue sharing program is no exception, although need is measured here by the level of expenditures for services as well as by the level of per capita personal income. For the year ending June 30, 1976, Mississippi, New York, and Vermont will receive approximately $40 per resident, as compared with per capita allocations of approximately $24 for Ohio, Indiana, and Florida. Similarly, central cities and poor rural communities generally receive larger per capita payments than affluent suburban communities.

III. Committee Consideration of Extension Legislation

Legislative jusisdiction over "general revenue sharing" was assigned to the Committee on Government Operations at the beginning of the 94th Congress. This legislation had previously been assigned to the Ways and Means Committee. Revenue sharing constitutes the largest single domestic program ever enacted by Congress. Recognizing the significance of the program and its impact on the Federal budget, as well as the budgets of the recipient State and local governments, the committee undertook an intensive review of the program.

The matter was assigned to the Intergovernmental Relations and Human Resources Subcommittee which held two sets of comprehensive hearings on the subject.

First, seven days of hearings were held in July 1975 on "Fiscal Relations in the American Federal System" in order to develop an appropriate background for evaluating the revenue sharing program. In these hearings, the subcommittee obtained very useful testimony from experts in the various specialized areas of public finance.

In September 1975, the Subcommittee began three months of in-depth hearings to take testimony both on the numerous and varied revenue sharing bills introduced in the House and on the operation of the program since 1972. The Subcommittee heard 101 witnesses, including 20 Members of Congress, representing a broad spectrum of viewpoints and social philosophies. In addition, 55 organizations and individuals submitted written statements for the hearing record, and a tremendous number of communications were received from public officials and interested citizens.

Following the completion of public hearings, informal discussions were held for the purpose of determining the position of the Members on the various bills before the Subcommittee. When it became evident that no single bill was acceptable to a majority of the Subcommittee as the vehicle for markup, a Working Paper was developed for the purpose. The Working Paper, which presented as objectively as possible a range of alternatives for each of the policy issues in which there appeared to be interest, served as the basis for marking up a bill in concept. A wide range of proposals for changing various provisions of the present Act were examined in detail by the Subcommittee. Upon the conclusion of these deliberations, a bill was drafted incorporating the Subcommittee's decisions, and that draft bill was further refined in succeeding meetings until a clean bill, H.R. 13367, was approved. Action by the Subcommittee was completed on April 30, 1976, after 16 formal meetings devoted to markup.

IV. Committee Action on H.R. 13367

The Committee met on May 4, 5, and 6, 1976, to consider and take action on H.R. 13367, the clean bill approved by the Subcommittee. Following the adoption of a number of amendments, described later in this report, the bill was ordered favorably reported by a vote of 39 to 3 with a quorum present.

V. Discussion

A. EXTENSION OF PROGRAM

(Term, Funding, and Entitlements)

Funding for the State and Local Fiscal Assistance Act of 1972 expires on December 31, 1976. H.R. 13367 will extend the program for an additional three and three-quarters years to September 30, 1980. The purpose of the three-quarter year segment is to synchronize the program with the Federal Government's new fiscal year, which begins on October 1 each year and terminates on September 30 of the following year.

During the three and three-quarter year extension, the program will continue to be funded at the level of funding for the last entitlement period under the 1972 act. Under the 1972 act, entitlement period 7 (July 1, 1976, through December 31, 1976) provides for funding at the rate of $3,325,000,000. On an annual basis, this reflects a funding rate of $6.65 billion. The committee's legislation provides for funding at that rate for each of the three fiscal years plus an appropriately adjusted amount for the three-quarter fiscal year from January 1, 1977, to September 30, 1977. The committee also authorizes the funding of the noncontiguous States adjustment amounts through the three and three-quarters years at the present level of $4,780,000.

The formula for allocating the $6.65 billion made available by this legislation is discussed more fully elsewhere in this report. (See allocation formula.) In essence, it is to be divided into two parts with $6.5 billion to be distributed under the formula in the 1972 act and all above that to be distributed in accordance with a new formula designed to target some additional funding to those jurisdictions with greatest need.

The $6.65 billion funding for this program is to be made available through an entitlement procedure in lieu of the authorizations-appropriations procedure followed in the 1972 Act. Under this procedure, the recipient State and local governments will become entitled to the $24.94 billion provided by this legislation.

The Congressional Budget and Impoundment Control Act of 1974 contains a provision permitting the enactment of spending authority by way of entitlement. Use of the entitlement procedure effectively takes the program out from under the auspices of the concurrent resolution on the budget and the usual appropriations process of Congress.

The proponents of the entitlements procedure assert that this certainty of receipt will enable the State and local governments to use these funds more efficiently. Those who favor the customary appropriations process question whether revenue sharing should be given a priority over other Federal programs such as national defense, health, education, etc.

B. ALLOCATION FORMULAS

Except for the addition of a new section providing for Supplemental Fiscal Assistance (discussed below), the Committee did not change the method of distributing funds under the 1972 Act.

The Act reflects a compromise between the differing formulas originally adopted by the House and the Senate. It also makes the allocation process more flexible and responsive to the particular circumstances of individual States by providing a choice between two formulas for allocating funds to each State area (which includes both the State government and its local governments): a 5-factor formula developed by the House, and a 3-factor formula developed by the Senate. The amount for each State area is tentatively computed under both formulas and each area is automatically given an allocation based on whichever of the two formulas yields the higher payment. If either Alaska or Hawaii uses the 3-factor formula, its allocation is increased (in accordance with the Noncontiguous States Adjustment) by the same percentage adjustment as applies to the base pay allowances of Federal Government employees residing in those States. This adjustment is intended to reflect higher living costs in those States.

Under the first, or House-originated formula, the total amount for each State area is based on five factors. Three of these factors are designed to take need into account: population, urbanized population, and population weighted by the relative per capita income of the United States compared to the State per capita income. Each of these factors is given a weight of about 22 percent and together comprise two-thirds of the total. The remaining two factors, general tax effort of the State and its localities, and State individual income tax collections provide some incentive and reward to the States and localities for meeting their fiscal requirements from their own tax sources. Each of these factors is given a weight of about 17 percent and together comprise one-third of the total.

Under the second, or Senate-originated formula, which is used if it produces higher payments than the 5-factor formula, funds are allocated to each State area on the basis of 3 factors that are given equal weight: population, relative income, and general tax effort. The factors in this formula, therefore, are similar to three of the factors in the 5-factor formula. However, the elements in the 3-factor formula are multiplied by each other instead of being given a particular weight. This tends to provide larger distributions to those States which have both low incomes and high tax effort.

Two-thirds of the amount allocated to each State area for each entitlement period is apportioned to the general purpose local governments in that State area (including cities, counties, towns, and townships); the remaining one-third share is apportioned to the State government.

The Act's provisions for distributing the local government share within each State are very complex. They require essentially the following procedures:

1. The amount to be allocated to units of local government is divided by the population of the State to establish the per capita entitlement for all governments within the State.

2. The local government amount is distributed to county areas (these are geographic areas, not governments) based upon the ratio that each county area bears to all county areas within the State, using a 3-factor formula (population × tax effort × relative income).

3. If this calculation allocates to any county area an amount which, on a per capita basis, exceeds 145% of the statewide per capita entitlement calculated in step 1, its amount is reduced to the 145% level and the resulting surplus amount is shared proportionately by all the remaining unconstrained county areas within the State.

4. Similarly, if any county area is allocated less than 20%, on a per capita basis, of the amount calculated in step 1, its allocation is increased to the 20% level and the resulting deficit is taken proportionately from all the remaining unconstrained county areas within the State.

5. Each county area allocation is then divided into four parts: First, an amount for Indian tribal governments or Alaskan native villages is determined by the ratio of tribal or village population to the total population of the county area.

Then, from the remainder, a township allocation is determined on the basis of the ratio of all township adjusted taxes (i.e., taxes excluding those for school purposes) to the total adjusted taxes in the county.

Next, a county government share is similarly determined on the basis of county government adjusted taxes.

The remaining proportion is reserved for the other units of local government.

6. The 3-factor formula is then used to allocate funds separately to townships and other local governments. If a unit of government receives more than 145 percent on a per capita basis, it is adjusted to the 145 percent level. If a unit receives less than 20 percent, its allocation is increased to the lower of either the 20 percent level, or 50 percent of its adjusted taxes and intergovernmental transfers. If any unit receives more than 50 percent of its adjusted taxes and transfers, its allocation is reduced to that level and the excess is given to the county government.

7. If the county government has been allocated more than 50 percent of its adjusted taxes and transfers, its allocation is reduced to that level, and the excess is returned to the State government. (This adjustment can result in a State share exceeding one-third of the funds.)

8. If any allocation is less than $200, or any unit of local government waives its entitlement, those funds are allocated to the next higher level of government.

Congress included these maximum and minimum constraints in the intrastate formula in order to prevent local governments from receiving extremely large or small entitlement amounts.

The Supplemental Fiscal Assistance section adopted by the Committee establishes a new allocation formula to be used in distributing a specific portion of the available funds both among the States and within each State area.

Forty percent of the applicable funds are to be allocated by the following factors: population multiplied by the income factor, divided by the sum of these products. (The income factor of a State, county area, or local government is a fraction: the numerator consists of the number of persons in families and the number of unrelated individuals 65 years or over who are below the poverty line (or below 125 percent of the poverty line if they reside in the central city of an urbanized area); the denominator consists of the same types of persons regardless of their income level.) The other sixty percent is to be based on either of the following two formulas, depending upon which would result in the greater amount: (a) population multiplied by the general tax effort factor, divided by the sum of those products; or (b) population multiplied by the income tax effort factor, divided by the sum of these products.

In addition, this new section contains the following major provisions applicable to it:

1. It eliminates the distinction between townships and other local units of government in allocating funds within the county area.

2. It provides that before county areas and units of local government receive their funds from the State, Indian tribes or Alaskan native villages will receive their allocation directly based on the ratio of their population to the population of the State. The population of the tribe or village is then not counted in determining the allocation in the county area in which it is located.

3. It eliminates the existing 20 percent minimum per capita entitlement and raises to 300 percent the 145 percent maximum per capita entitlement.

4. It increases from $200 to $2,500 the minimum entitlement which a local government must receive in any entitlement period in order to be eligible for supplemental funds.

The primary objective of the Supplemental Fiscal Assistance section is to target some additional funding to those jurisdictions that have the greatest service needs and very limited fiscal capacity to meet those needs. Central cities and poor rural communities are intended to be its main beneficiaries. The formula is designed to accomplish this objective primarily by substituting the number of persons below the poverty level (or below 125 percent of that level in the case of a central city) for per capita income as the basic measure of need.

C. ELIMINATION OF THE TRUST FUND ON REVENUE SHARING

The legislation creating the revenue sharing program provided for establishment on the books of the Treasury a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund." In fact, there is no trust fund and none is necessary for carrying out this program.

In its present form, the trust fund concept is a fiction. No money is set aside into a trust fund for use only in the State and local fiscal assistance program. These funds are disbursed from the general fund of the Treasury as are most other appropriated Federal funds.

The committee recommends the removal of the references to the trust fund in order to eliminate a misconception of the nature of the program. Deletion of the references to the trust fund does not affect the operation of the revenue sharing program in any way.

The committee makes it clear that this action is not intended to take away from the Secretary any authority he has been using to make adjustments where recipients have been overpaid or underpaid.

D. ELIMINATION OF PRIORITY EXPENDITURES PROVISION

The State and Local Fiscal Assistance Act of 1972 provided that revenue sharing funds could be used only for certain priority expenditures. Priority expenditures were defined as ordinary and necessary maintenance and operating expenses for public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration. Priority expenditures also included ordinary and necessary capital expenditures authorized by law.

The committee bill eliminates this provision entirely. One purpose of the revenue sharing program is to distribute funds to State and local governments for use as they determine. The continuation of priority expenditure categories is inconsistent with that basic purpose of the act. Furthermore, since revenue sharing funds are fungible with other State and local government revenues, it is impossible in many cases to determine for what purposes the funds are actually being used.

The committee's deletion of the priority expenditures provisions has the effect of permitting State and local governments to use revenue sharing funds for any purpose consistent with Federal, state, and local law.

In addition to eliminating the restrictions on purposes for which the funds may be used, the committee made clear its intent that the funds be expended by the recipients in a timely manner. Section 123 (a)(2) of the Act presently require the recipient governments to "use" revenue sharing funds "during such reasonable period or periods as may be provided" in regulations prescribed by the Secretary. The regulations that have been promulgated require the recipient to "use, obligate, or appropriate" such funds within 24 months. Expansion of the term "use" to include "obligate or appropriate" has created situations that circumvent the intent of Congress. The regulation sets no time period for the actual expenditure of the funds.

Although no specific language is included in the legislation, the Committee believes the intent of Section 123(a)(2) would be better met if the regulations set a reasonable time for the actual expenditure of the funds. The Secretary should retain his power to extend the time requirements where he feels it is necessary or appropriate to meet the purposes of the Act.

E. ELIMINATION OF PROHIBITION ON USE AS MATCHING FUNDS

The committee recommends the deletion of the provision of the State and Local Fiscal Assistance Act of 1972 which prohibits State and local governments from using revenue sharing funds directly or indirectly for the purpose of obtaining Federal funds in matching programs. This provision was included in the original program in an effort to deter recipients from obtaining 100 percent Federal funding for programs that are intended to require some contribution from local resources.

In recognition of the "no strings" nature of the revenue sharing program, the committee determined that continuation of this prohibition was not appropriate or meaningful. Revenue sharing funds are intended to be available for use in essentially the same manner the recipients could use funds from their own sources. Under the existing act, the prohibition can often be avoided by using revenue sharing funds in such a way as to release local funds for use as matching funds.

Removal of the prohibition on use as matching funds is not intended to encourage State and local governments to seek out matching programs for the purpose of multiplying Federal grant revenues. It was argued, however, that to the extent this prohibition has any effect, its most restrictive impact is on social service programs, including those for the poor and elderly. Because of their own budget restrictions, some State and local governments found it impossible to participate in these matching grant programs because local revenues were often absorbed by ongoing programs.

F. MAINTENANCE OF EFFORT

The present Act requires each State government to continue to assist all units of general local government within the State to the same extent as it had assisted them just prior to the enactment of this legislation. The Act provides that a State may receive the full amount allocable to it for an entitlement period beginning after June 30, 1973, only if it distributes as much to its local governments in the aggregate from its own sources (based on the average during that entitlement period and the immediately preceding entitlement period) as it did in the year beginning July 1 1971 (one-half of this amount in the case of the last entitlement period, July through December 1976). If it fails to do so, the amount that otherwise would be distributed to the State is to be reduced dollar for dollar by the reduction in its aid to its localities. The Act provides for adjustments in the required maintenance of effort if a State government assumes part or all of the responsibility for a category of expenditures that was previously a local government responsibility or if it confers new taxing authority on one or more of its local governments.

The bill reported by the Committee continues this provision, but designates the year beginning July 1, 1975 (or until such data are available, the most recent one-year period for which data are available) as the base period in place of the year beginning July 1, 1971.

G. DEFINITION OF UNIT OF LOCAL GOVERNMENT

The present Act defines a "unit of local government" as the government of a county, municipality, township, or other unit below the State which is treated as a unit of general government by the Census Bureau for general statistical purposes. The term also includes the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The term "township" is meant to include equivalent local units having different designations, such as "towns."

Some concern was expressed before the subcommittee that large numbers of single-purpose governmental units were qualifying as recipients under the existing definition. Since the revenue sharing program is intended to aid general purpose governments, the committee clarified the existing definition by including several additional specifications. To meet the revised definition, which becomes applicable on October 1, 1977, a unit of local government must impose taxes or receive intergovernmental transfer payments for the substantial performance of at least two services for their citizens from among the commonly provided municipal-type services listed in the bill. In addition, a local unit must spend at least 10 percent of its total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property) in the most recent fiscal year for each of two such services. However, this additional requirement is not applicable to a local unit which performs four or more such services, or which has performed two or more such services since January 1, 1976, and continues to perform them.

H. CITIZEN PARTICIPATION (PUBLIC HEARINGS, REPORTS, AND PUBLICATION REQUIREMENTS)

The Act presently requires each recipient government to submit reports to the Treasury Department for each entitlement period on the planned and actual use of revenue sharing funds. This provision was intended to assist the Treasury Department in enforcing the various statutory requirements. The Act also requires each State and local government to publish such reports in a general circulation newspaper in order to inform the public of the uses made of the funds and the extent to which the planned uses are carried out.

The Committee bill contains strengthened provisions to help assure that citizens are afforded an opportunity to participate in determining how these funds are to be used by their State and local governments. This is accomplished by specific requirements for two hearings, after adequate notice, concerned respectively with the development of the proposed use report and with the use of these funds in relation to the government's entire budget; for dissemination of information on the proposed and actual use of the funds in relation both to particular items in a government's entire budget and to the use of the funds in previous fiscal years; and for newspaper publication of the report on the proposed use of funds and of the narrative summary of the adopted budget. It is the Committee's view that the public should have as much opportunity as possible to participate with their State and local officials in deciding the uses of Federal assistance made available for unrestricted purposes.

The bill continues the present provision for submission of the proposed and actual use reports to the Treasury Department, and, in addition, requires the Secretary of the Treasury to provide copies of these reports to the governors of the respective States for their information. In addition, it requires each unit of local government within a metropolitan area to submit its proposed use report to the areawide planning organization concerned with implementing certain provisions of specified Federal laws for the latter's information. The bill changes the name of the "planned use report" to the "proposed use report" for better identification of its purpose.

The Secretary of the Treasury is authorized to waive the requirements for publication of the proposed use report and of the narrative summary of the adopted budget, and to waive the requirement for a hearing before adoption of the proposed use report, if the cost of such requirements would be unreasonably burdensome in relation to a local or State government's entitlement. The Secretary may also waive the requirement for a budget hearing if the budget process required under State or local laws, or charter provisions, assure the opportunity for the public attendance and participation contemplated by the hearing requirement, and if a portion of such processes include a hearing on the proposed use of revenue sharing funds. This waiver was included particularly to accommodate the situation in some local jurisdiction where a single "town hall" type of meeting is held in which all citizens are entitled to vote on the community's budget. The bill also authorizes the Secretary to shorten, to the minimum extent necessary to comply with State and local laws, the requirement for publishing the proposed use report 30 days prior to the budget hearing if the Secretary is satisfied that the citizens affected will receive adequate notification.

The Committee recognizes that the requirements with respect to the times specified in the bill for hearings and the publication of reports and budget summaries for each entitlement period may not conform with the budget cycle of individual State or local governments. This is to be expected in view of the wide variation in the fiscal years used by the States and their local governmental units. Accordingly, the Committee expects that the Secretary will take this situation into account in promulgating regulations, and in adopting procedures, for accomplishing the purposes of this legislation.

I. NONDISCRIMINATION PROVISION

Background.—Section 122 of the current law prohibits discrimination on the basis of race, color, sex, or national origin in any program or activity funded with revenue sharing proceeds which is conducted by a state government or unit of local government. Under the Act, the Secretary is authorized to take appropriate administrative action to secure compliance with the nondiscrimination provisions and to refer cases of noncompliance to the Attorney General for suit. In addition to such referrals, the Act also provides independent authority for the Attorney General to initiate suits against recipient governments engaged in a "pattern or practices" of prohibited discrimination.

The Committee is aware of major deficiencies in the effectiveness of Section 122. The "fungibility" of shared revenues has sometimes permitted recipients to escape coverage by designating revenue sharing funds as having been used in programs or activities where discrimination does not exist while using their own freed-up funds in programs or activities which are discriminatory. The Secretary of the Treasury has inadequately utilized his discretionary authority to enforce the nondiscrimination provision.

The Committee revised Section 122 to strengthen the nondiscrimination provisions. The revision seeks to improve enforcement at the

Federal level, to provide better coordination among federal, state, and local civil rights agencies and to insure that recipients will not be subject to conflicting enforcement standards. With these goals in mind, the Committee adopted the following changes in Section 122.

Scope of Section.—The present law prohibits discrimination on the basis of race, color, national origin, or sex in any program or activity funded in whole or in part by shared revenues. The revised section broadens the prohibition of discrimination in two ways. Firstly, it adds age, handicapped status, and religion to the prohibition. Secondly, it requires that all activities of a recipient government be free from discrimination. The requirement was created by the committee because of the difficulty of tracing the shared revenue and identifying the separate and distinct activities funded by it. A recipient government can utilize various accounting techniques to substitute shared revenue for its own funds in a particular activity. These displacement possibilities allow the recipient to designate shared revenue as being used in activities less subject to civil rights complaints. The recipient jurisdiction can then designate its own freed-up funds as being used in activities more subject to civil rights challenges. Under current law, these accounting techniques immunize from challenge activities where discrimination might exist because the activities are not funded directly by revenue sharing payments.

The blanket prohibition would not apply when a recipient jurisdiction can prove by "clear and convincing evidence" that the activities alleged to be discriminatory are not funded in whole or in part, directly or indirectly, with shared revenue. Because of the displacement possibilities available, the committee felt the stringent evidentiary standard of "clear and convincing evidence" was necessary to avoid deception.

Enforcement Mechanism.—The current law commits federal enforcement to the discretion of the Secretary of the Treasury and the Attorney General. The committee felt that the poor nondiscrimination enforcement record of the revenue sharing program to date necessitated the mandating of certain enforcement steps.

(*a*) *Secretary of the Treasury.*—The central feature of the revision is a trigger mechanism which determines when the Secretary will begin compliance proceedings by sending appropriate notices to the noncomplying recipients. Such notification will be triggered under two circumstances: (1) when a federal or state court or administrative agency, after notice and opportunity for the recipient to be heard, makes a finding of discrimination on the basis of race, color, religion, sex, national origin, age, or handicapped status; and (2) when the Secretary, after affording the recipient an opportunity to make a documentary submission, makes a initial determination of noncompliance based on his own investigation.

After the notification, the recipient has 90 days to end the discrimination and take wwhatever affirmative steps are necessary to conform its practices to the law. The recipient may request a hearing on the merits which the Secretary is required to initiate within 30 days of the request. At that hearing the recipient may raise any defense available under the law, including the contention that the shared revenues were not used in the program or activity in which the alleged discrimination occurred.

In advance of the hearing on the merits, the recipient may also request a preliminary hearing before an administrative law judge when the notification to the recipient is based on the Secretary's initial determination of non-compliance. When notification is triggered by a finding of a Federal or state court or administrative agency, there is no need for such a preliminary hearing because the recipient has already been afforded an opportunity for a hearing on the merits. Such a preliminary hearing must be requested within 30 days of the notification of non-compliance and must be completed within the 90 day period. If the recipient demonstrates that it is likely to prevail on the merits at a subsequent full hearing, the administrative judge is authorized to order a deferral of a fund suspension which would otherwise automatically occur at the conclusion of the 90 days if compliance is not achieved.

At the end of the 90 days, the payment of shared revenues is automatically suspended if a compliance agreement has not been signed, or if compliance itself has not been achieved, or if an administrative law judge has not entered an appropriate order. The suspension of funds applies only to a local government which is the subject of the notification from the Secretary. The payment of funds to other governments in the state or the state itself remains unaffected. The suspension then remains in effect for a period of 120 days, or 30 days after the conclusion of a hearing on the merits, whichever is later. During this period of suspension, the Secretary is obligated to make a final determination of compliance or non-compliance. If insufficient evidence of non-compliance is presented to the Secretary, then the suspended payments and all future payments are paid to the recipient. If non-compliance is found, the funds are terminated and the Attorney General is notified. The recipient government could, of course, seek resumption of payments when it achieved compliance with the Act.

(b) *Attorney General.*—Under present law, the Attorney General is authorized to initiate legal action against any recipient which is engaged in a "pattern or practice" of discrimination in violation of the Act. That authority is continued under the revision, and the Attorney General is given express authority to seek suspension, termination, or repayment of shared revenues. The revision gives the Attorney General the responsibility of monitoring and coordinating the nondiscriminatory compliance activities of the Treasury. The revision requires the Secretary to suspend payments of shared revenue 45 days after the filing of a "pattern or practice" suit by the Attorney General against a recipient. The recipient, however, always has the right, within the first 45 days after filing, to obtain a preliminary injunction deferring the suspension of funds.

Citizen remedies.—Under the revenue sharing statute and other nondiscrimination laws, private citizens, or organizations representing their interests, may sue the United States or any recipient government for using shared revenues in a discriminatory fashion. Those rights are continued under the revised Section 122. A new Section 125 of the Act authorizes courts to award attorney fees in citizen law suits and authorizes the Attorney General to intervene when it is a case of general public importance. In *Alyeska Pipeline Service Corp.* v. *The Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court held that counsel fees cannot ordinarily be awarded without express congressional authorization. Therefore if citizens are to recover their attorney fees, this section is essential. It is expected that the courts will apply the attorney fee provision in accordance with applicable Supreme Court and lower federal court standards.

The Committee is aware that complaints alleging the discriminatory use of revenue sharing funds have not been processed by the Secretary as expeditiously as possible. A new section 124 of the Act requires the Secretary to establish reasonable and specific time limits for responding to a complaint and making an appropriate determination with respect to the allegations contained therein. The new section also requires the Secretary to establish time limits for conducting compliance reviews and audits of recipient governments to determine compliance with the provisions of the Act.

Inter-agency cooperation agreements.—To achieve greater efficiency in enforcement, the bill requires the Secretary to enter into cooperation agreements with appropriate Federal and state agencies. Such agreements must detail the cooperative efforts to be undertaken, including the sharing of resources and personnel. They must also include procedures for notifying the Secretary whenever findings of discrimination are made or, in the case of the Attorney General, whenever a pattern or practice suit is filed against a recipient.

J. AUDITING AND ACCOUNTING

The 1972 Act gives the Secretary of the Treasury the responsibility for providing for such accounting and auditing procedures and reviews as the deems necessary to insure that the expenditures of revenue sharing funds comply with the requirements of the Act. Recognizing the size of the revenue sharing program, the number of participants, and the virtually unrestricted use allowed, the committee determined that more explicit and uniform auditing requirements are in order.

To be able to obtain revenue sharing funds, each State and local government must utilize fiscal, accounting and auditing procedures which comply with the standards established by the Secretary of the Treasury and must also conduct independent audits which are in accordance with generally accepted auditing standards. The "generally accepted auditing standards" is the standard adopted by the General Accounting Office and the Certified Public Accountants national organization. This standard will provide some uniformity so that the General Accounting Office can effectively conduct the oversight responsibilities placed upon it by this section over the 38,000 governmental units involved in the program.

The Secretary of the Treasury is required to promulgate regulations which assure that each governmental unit conducts an audit each fiscal year which is in accordance with the standard referred to above. The section does allow the Secretary to provide for less formal reviews of financial information or less frequent audits for those States or units of local government whose funding under this program is such that that cost of an annual audit would be unreasonably burdensome.

The regulations are also to provide that the audits and financial statements provided by this section are public documents. This requirement should assist in making the citizen participation section of the Act more meaningful since citizens will be able to see the purposes for which the revenue sharing funds were spent.

K. PROHIBITION OF USE FOR LOBBYING PURPOSES

The committee recommends that the recipients of revenue sharing funds be prohibited from using those funds for the purpose of lobbying or other activities intended to influence legislation regarding revenue sharing. This prohibition is consistent with the general policy of the Federal government's prohibiting the use of Federal funds for the purpose of soliciting additional Federal funds.

There is no intention on the part of the committee to restrict individuals, including State and local officials, from making their views on related legislation known. The restriction goes only to the use of revenue sharing funds for such purposes.

The language of the legislation makes clear that, for purpose of this prohibition, dues paid to national and state associations shall not be deemed to have come from revenue sharing funds. The committee does not intend to restrict the national or state associations from appropriately carrying out their responsibilities to their members.

It is anticipated that the recipients of revenue sharing funds would certify in their annual use reports that no funds have been used in violation of this provision.

L. APPLICATION OF DAVIS BACON ACT

The 1972 Revenue Sharing Act provides that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project of which 25 percent or more of the costs are paid out of revenue sharing funds, will be paid in accordance with the provisions of the Davis Bacon Act. It has been alleged that many recipient governments have allocated their revenue sharing funds among numerous construction projects in order to stay below the 25 percent threshold on any one project in an effort to bypass the impact of this provision. The committee recommends the deletion of the "less than 25 percent" exemption, thereby extending Davis Bacon Act coverage to all construction projects financed with proceeds from the revenue sharing program. The bill does not extend the Davis Bacon wage standards to construction projects which are not financed in any part with revenue sharing funds.

The committee was also concerned that some recipients were effectively avoiding the Davis Bacon provision by temporarily employing on their government payroll laborers and mechanics working on these construction projects. The 1972 provision applies only to laborers and mechanics employed by contractors and subcontractors. The committee recommends that the reference to contractors and subcontractors be deleted, thereby extending the provision to all laborers and mechanics employed on construction projects financed with revenue sharing funds. The committee provision makes clear, however, that it does not intend this provision to extend to permanent, full-time employees of the State or local government.

M. MODERNIZATION OF GOVERNMENT

Many of the problems experienced by large numbers of local governments arise because the boundaries or functions of that government remain static while the constituency it serves fluctuates. One of the criticisms leveled at the revenue sharing program is that these funds tend to perpetuate ineffective and inefficient units of local government. Local governmental units should be periodically adjusted to reflect changing population and economic patterns.

The bill reported by the committee creates a new section of the Act intended to encourage the modernization and revitalization of State and local governments. It establishes as a goal that each State government should prepare a plan and time-table for modernizing and revitalizing the State and local governments. The States are not required to prepare and implement this plan; but, each State is required to submit to the Secretary of the Treasury an annual report describing steps taken to achieve the goal. Treasury is required to report annually to the Congress on the progress made by each State in the development and implementation of the State's plan and time-table.

To assist the States in achieving the goal of the bill, the provision contains a broad series of nonexclusive criteria for the State to use if it chooses in the development of the State plan. It is suggested that the plan include proposals for improving the effectiveness and economy of State and local governments, the steps necessary to effectuate those proposals, and a time-table for effectuating each proposal within a reasonable period. The States are encouraged to reduce the number of limited-function governments and special districts and to increase broad participation of the general public in the decision-making process.

The committee emphasizes that this provision is not mandatory, with the exception of the annual report of the State to the Secretary describing any steps taken to achieve the goal set forth. The committee further points out that this provision contains no penalties for failure to comply.

VI. STATEMENT PURSUANT TO CLAUSE 2(1)(3)(A) OF RULE XI

The House Committee on Government Operations conducted extensive hearings and investigations into the performance of the State and Local Fiscal Assistance Act of 1972. These activities did not result in any specific oversight findings but rather in the legislation that is the subject of this report.

VII. STATEMENT PURSUANT TO CLAUSE 2(1)(4) OF RULE XI

The enactment of this bill into law is not expected to have any inflationary impact on prices or costs in the operation of the national economy.

VIII. Statement Pursuant to Clause 7(a) of Rule XIII

(1) The committee estimates that the enactment of H.R. 13367 will result in the following costs:

Fiscal year	
1976	No costs
1977	$4,991,085,000
1978	6,654,780,000
1979	6,654,780,000
1980	6,654,780,000
1981	Not applicable

(2) No government agency has submitted an estimate of costs involved in H.R. 13367 to the House Government Operations Committee.

IX. Statements Pursuant to Section 308(a) of the Congressional Budget and Impoundment Control Act of 1974 and Clause 1(1)(3)(B) of Rule XI

(1) H.R. 13367 provides $4.991 billion in Fiscal Year 1977 as new entitlement authority for the revenue sharing program. The most recent concurrent resolution on the budget for Fiscal Year 1977 sets forth the sum of $7.35 billion for Function 850 Revenue Sharing and General Purpose Assistance. The 302(a) report accompanying the concurrent resolution allocates $4.880 billion in Function 850 new entitlement authority to the House Government Operations Committee. Hence, H.R. 13367 provides approximately $111 million more new entitlement authority for the revenue sharing program than is provided for in the most recent concurrent resolution on the budget.

(2) The Congressional Budget Office has informed the Committee that the five-year projection of outlays associated with H.R. 13367 is as follows:

Outlays

Fiscal year:	*Billions*
1977	$3.325
1978	6.650
1979	6.650
1980	6.650
1981	1.663

The entitlement for the last quarter of any fiscal year is paid within the first five days of the following quarter. H.R. 13367 authorizes entitlements for three quarters of fiscal year 1977, and four quarters of fiscal year 1978, fiscal year 1979, and fiscal year 1980. The outlays for fiscal year 1977 are less than the entitlement amount by one quarter's payment, and the last quarter's payment for fiscal year 1980 occurs in fiscal year 1981.

(3) The Congressional Budget Office has informed the committee that all new budget authority and budget outlays mandated by H.R. 13367 would be for financial assistance to State and local governments.

X. STATEMENT SUPPLIED BY CONGRESSIONAL BUDGET OFFICE PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974 IN CONFORMANCE WITH CLAUSE 2(1)(3)(c) RULE XI

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 14, 1976.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 13367, a bill to extend and amend the State and Local Fiscal Assistance Act of 1972.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

JAMES L. BLUM,
(For Alice M. Rivlin, Director).

Attachment.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

1. Bill number: H.R. 13367.

2. Bill title: Fiscal Assistance Amendments of 1976.

3. Purpose of bill: This bill extends and amends the State and Local Fiscal Assistance Act of 1972. Funds for the general revenue sharing program are provided for the period from January 1, 1977 through September 30, 1980.

4. Cost estimate: (Fiscal years, in thousands of dollars).

	1977[1]	1978	1979	1980	1981
Budget authority	4,991,085	6,654,780	6,654,780	6,654,780	
Estimated outlays	3,325,000	6,650,000	6,650,000	6,650,000	1,662,500

[1] The original law, Public Law 92-512, provides funding through the 1st quarter of fiscal year 1977. The bill provides money for the remaining 3 quarters of the fiscal year.

5. Basis for estimate: The bill contains explicit dollar amounts for general revenue sharing payments for the periods, January through September 1977, FY 1978, FY 1979, and FY 1980. In the past the spendout pattern has been that the allotment for the last quarter of any fiscal year is paid within the first five days of the first quarter of the next fiscal year. Consequently, the outlays for FY 77 are less than the budget authority by one quarter's payment, and there is a one quarter's payment in FY 81 after the program has expired.

Subtitle D of the bill targets $112.5 million in FY 1977 and $150 million annually in FY 1978 through FY 1980 to poverty areas. The CBO estimate assumes that the outlays from this program follow the same spendout pattern as the rest of the general revenue sharing program. Subtitle D also contains an authorization for Congress to appropriate an unspecified amount of additional funds for distribution under the terms of this program for poverty areas. Since there is no specific dollar figure for this authorization, no estimate has been made of the costs that might be incurred under this authorization.

There is also a provision for a non-contiguous state adjustment amount. For the last three quarters of FY 1977, the amount is $3.585 million, and for the other three fiscal years, the amount is $4.78 million. This money is available for Alaska and Hawaii to draw upon, depending upon the formula they use to determine their allocations. In the past, they generally have used a formula which does not permit them to receive additional amounts from this section. It is assumed that there will be no future outlays from this authority.

6. Estimate comparison: Not applicable.
7. Previous CBO estimate: Not applicable.
8. Estimate prepared by: Roger M. Winsby (225-5373).
9. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

XI. SECTION-BY-SECTION ANALYSIS

Section 1

This Act is cited as the Fiscal Assistance Amendments of 1976.

Section 2

This section states that the term "the Act" refers to the State and Local Fiscal Assistance Act of 1972 (Title I of Public Law 92-512, approved October 20, 1972).

Section 3—Elimination of Priority Expenditure Categories

(a) This section amends Subtitle A of the State and Local Fiscal Assistance Act of 1972 to eliminate Section 103 which requires local governments to spend their allocations of funds received under this Act for certain "priority expenditures". Under this amendment local governments would no longer be compelled to spend their allocations for any of the following priority categories:

(1) ordinary and necessary maintenance and operating expenses for:

(A) public safety (including law enforcement, fire protection, and building code enforcement),

(B) environmental protection (including sewage disposal, sanitation and pollution abatement),

(C) public transportation (including transit systems and streets and roads),

(D) health,

(E) recreation,

(F) libraries,

(G) social services for the poor or aged, and

(H) financial administration; and

(2) ordinary and necessary capital expenditures authorized by law. This amendment would grant local government recipients of funds

under this Act the same treatment as that accorded State governments which, under the existing legislation, are not subject to the requirements set forth in Section 103.

(b) This subsection strikes out paragraph (3) of Section 123(a) of the Act.

Paragraph (3) of Section 123(a) imposes a penalty upon any local government for failure to give assurances to the Secretary of the Treasury that it will use amounts deposited in its trust fund (including interest earned thereon) during an entitlement period only for the priority expenditures enumerated in Section 103(a) of the Act. Under this penalty, 110 percent of any amount expended out of a local government's trust fund in violation of paragraph (3) of Section 123 (a) must be paid to the Secretary of the Treasury unless corrective action is taken by the government in question, which amount shall then be deposited in the general fund of the U.S. Treasury. This subsection represents a conforming amendment to eliminate this penalty provision.

Section 4—Elimination of Prohibition on Use of Funds for Matching

(a) This subsection strikes out Section 104 which prohibits State and local governments from using any part of the funds they receive under the Act, directly or indirectly, to match Federal grants received under other programs.

(b) Section 104 (b) authorizes repayment, or the withholding by the Secretary of the Treasury from State or local units of government, of amounts equal to those used in violation of Section 104 (after notice and opportunity for a hearing is granted to the government in question). Subsection (b) of Section 4 of the bill is a conforming amendment to strike 104(b) from Section 143(a) of the Act which gives State and local governments, after having received notice of withholding of payments by the Secretary of the Treasury, the right to file with a U.S. Court of Appeals petitioning for review of this action by the Secretary of the Treasury. Since Section 104 is stricken from this legislation, there is no longer any need for this provision.

Section 5—Abolition of the Trust Fund Concept

Amendments made by Section 5 of the bill delete the concept of a State and Local Fiscal Assistance Trust Fund for the Act. The Trust Fund concept is unnecessary and superfluous to the Act and creates the impression that revenue sharing funds are somehow segregated from other funds in the Treasury. The elimination of references to the Trust Fund does not affect the operation of the program.

Section 6:

(a) *Extension of Program and Funding.*

Section 105 of the Act provided $30.2 billion in permanent appropriations to the State and Local Government Fiscal Assistance Trust Fund for payments to State and local governments during the five-year initial life of the program from January 1, 1972 through December 31, 1976. Section 6(a) amends Section 105 to authorize $24.955 billion in appropriations to finance a 3¾ years extension of this program as an "entitlement" program. The extension runs from January 1, 1977 to September 30, 1980.

Subsection (c) of Section 105 is redesignated (d). This subsection authorizes that transfers be made from time to time by the Secretary of the Treasury to the general fund of the Treasury any funds appropriated which he determines will not be needed to make payments to State governments and units of local government under the revenue sharing program.

A new subsection (c) is inserted after subsection (b) of Section 105 which is designated "Authorizations of Appropriaitons for Entitlements". This new subsection contains the following authorization of amounts to be appropriated to pay entitlements to qualifying State and local governments during this extension period:

Authorizations of appropriations for entitlements

In General:	
For the period beginning Jan. 1, 1977 and ending Sept. 30, 1977	$4, 987, 500, 000
For each of the fiscal years beginning Oct. 1, 1977, Oct. 1, 1978 and Oct. 1, 1979 $6,650,000,000	19, 950, 000, 000
Subtotal	24, 937, 500, 000
Noncontiguous State adjustment amounts (Alaska and Hawaii):	
For the period beginning Jan. 1, 1977 and ending Sept. 30, 1977	3, 585, 000
For each of the fiscal years beginning Oct. 1, 1977, Oct. 1, 1978 and Oct. 1, 1979, $4,780,000	14, 340, 000
Subtotal noncontiguous States adjustment amounts	17, 925, 000
Total authorization of appropriations for the period from Jan. 1, 1977, through Sept. 30, 1980	24, 955, 425, 000

Subsection (c)(1)(B) contains a provision to conform this section to section 15 of the bill which creates a new subtitle D. The conforming exception provides that sums authorized as an entitlement under subsection (c)(1)(B) in excess of the amount specified in section 163(a)(1) or (2) shall be distributed under subtitle D as an entitlement. This will result in the distribution of $562,500,000 of the $24,955,425,000 being available for distribution under subtitle D.

Section 6(b) amends Section 105, "Allocation Among States" as follows:

Paragraphs (1), (2), and (3) of Section 6(b) are conforming amendments to insure that amounts authorized by subsection (a) will be distributed as entitlements of States and local governments and provides that distribution will be based on the amounts authorized, not on the amount appropriated. This necessarily implies that appropriations must equal authorizations. As a result the entitlement system would appear to be spending authority within the meaning of Section 401c 2(c) of the Congressional Budget Act of 1974.

Section 6(b)(4) amends Section 107(b) of the Act by redesignating paragraphs (6) and (7) as paragraphs (7) and (8) respectively, and by inserting a new paragraph (6) which contains the following special rule which applies to the first nine months of the extension period (January 1, 1977 through September 30, 1977):

Under Section 107(b) "a State may receive the full amount allocable to it for an entitlement period beginning after June 30, 1973 only if it distributes as much to its local governments in the aggregate from its own sources, on the average during that entitlement period and immediately preceding entitlement period as it did in fiscal year 1972." [1] With respect to the nine-month entitlement period beginning January 1, 1977, the aggregate amount taken into account for the preceding entitlement period and for the fiscal year 1972 shall be three-fourths of the amounts which (except for this paragraph) would be taken into account.

Section 6(b)(5) amends Section 108(b)(6)(D) of the Act to reduce the $200 *de minimis* provisions to $150 for a nine-month entitlement period. Under the 1972 Act a local government below the level of county government must be entitled to receive a minimum of $200 during a one-year entitlement period in order to receive funds under this Act. In those instances where a local government's allocation is less than this amount, its allotment is added to that of the county government in the county area in which the local government is located. This amendment simply reduces proportionately the amount imposed by the *de minimis* rule for a shorter entitlement period.

Section 6(b)(6) amends Section 108(c)(1)(C) which permits a State to adopt an alternative formula for distribution of these funds among county areas and among other local governing units (other than county governments) within the State. The current law permits a State to change the Act's basic formula only once during the five-year life of the program. This amendment simply extends this provision to the end of the proposed extension period (September 30, 1980).

Section 6(b)(7) amends Section 141 (b) of the Act which defines entitlement periods to add the following new entitlement periods: for the period from January 1, 1977 through September 30, 1977 and for each of the fiscal years beginning October 1, 1977, October 1, 1978 and October 1, 1979.

Section 7.—Maintenance of Effort; Change of Base Year

Section 7(a)(1) amends Section 107(b)(1) of the Act to extend applicability of the provision which authorizes a reduction in a State government's allotment which fails to maintain transfers out of its own sources to local governments within its boundary to entitlement periods which begin on or after January 1, 1977. Under the existing law this provision applies to entitlement periods which begin on or after January 1, 1973.

Section 7(a)(2) strikes out clause B of Section 107(b)(1) and inserts a new clause which changes the base year which is used to determine whether a State government has failed to comply with the maintenance-of-effort provision. The new clause B substitutes the fiscal year 1976, or the most recent one-year period for which similar aggregate amounts are available, for the base year of fiscal year 1972 which is given in the present Act.

(b) This provision amends Section 107(b)(2) which permits an adjustment to be made in the amount which a State must transfer to its local governments in those instances where a State assumes responsibility for a part or all of a category of expenditure which, prior to July 1, 1972, was carried on by its local governments. This amendment would change the base year referred to in this paragraph to conform to the amendment offered in Section 7(a)(2) of this bill (which changes the base year from the fiscal year 1972 to the fiscal year 1976, or the most recent one-year period for which data are available).

---

[1] U.S. Congress. Joint Commitee on Internal Revenue Taxation. General explanation of the State and Local Fiscal Assistance Act and the Federal-State Tax Collection Act of 1972 (H.R. 14370, 92d Congress, Public Law 92-512). Washington, U.S. Govt. Print. Off., February 12, 1973, p. 29.

Section 8.—Definition of Unit of Local Government

This section amends Section 108(d)(1) of the Act to redefine units of local government which qualify for payments under this Act to include the following: the government of a county, municipality or township which is a unit of general government (as determined by the Bureau of the Census for general statistical purposes).

Furthermore, such local governments must meet the following requirements with respect to entitlement periods which begin on or after October 1, 1977: At least 10 percent of their total expenditures (exluding those for general and financial administration and for property tax assessment) during the most recent fiscal year, must have been utilized for each of two of any of the fourteen public services enumerated below. Exempt from this provision are governmental units which substantially perform four or more of such services for their citizens. Furthermore, such local governments must impose taxes or receive intergovernmental transfer payments which are utilized by them for substantial performance of at least two of the fourteen public service categories. For purposes of this legislation, a governmental unit is considered to be imposing taxes even though they are collected by another governmental entity from the same geographic area served by that unit, if they are transferred to that local government.

The fourteen public service categories enumerated in this section are as follows:

(A) police protection;
(B) courts and corrections;
(C) fire protection;
(D) health services;
(E) social services for the poor or aged;
(F) public recreation;
(G) public libraries
(H) zoning or land use planning;
(I) sewerage disposal or water supply;
(J) solid waste disposal;
(K) pollution abatement;
(L) road or street construction and maintenance;
(M) mass transportation; and
(N) education.

This section continues the practice of existing law by including in its definition of local government, the recognized governing body of an Indian tribe or Alaskan native village (except for purposes of paragraphs (1), (2), (3), (5), (6)(C) and (D) of subsection (b) and of subsection (c) of Section (108)) which performs substantial governmental functions.

Omitted from this definition are single-purpose units of local government which currently receive funds under the Act.

MODERNIZATION—SECTION BY SECTION

Section 9—This section adds a new Section 120 to Subtitle B of Title I of the Act

Section 120, entitled "Modernization of Government" requires each state to submit to the Secretary of the Treasury an annual report describing steps the state has taken to achieve the goal of this section. The goal is that each state develop a master plan and timetable for modernizing and revitalizing state and local governments.

If the governor of the state prepares a proposed master plan and timetable he must allow 120 days for comment to elapse before submitting the final master plan to the state legislature. The state legislature must decide whether or not the final plan and timetable will be submitted to the Secretary of the Treasury. A proposed master plan and timetable is not required nor is the submission of the final plan or timetable to the Secretary required. The Secretary must only receive reports on the steps taken to develop the plan and timetable.

Section 120 contains a listing of broad criteria which may be utilized by the state in developing the contents of the plan and timetable if the state so desires. The Section also contains a listing of suggested methods the state may desire to utilize in discussing the effectiveness, economy, and equity of the state and local government in the master plan.

Section 120 requires the Secretary of the Treasury to annually report to Congress on the progress made by each state in developing and implementing a master plan and timetable and make recommendations concerning the encouragement of each state to develop a master plan and timetable.

Section 10—Citizen Participation; Reports:

Section 10(a)

This subsection amends Section 121 of the Act in its entirety.

Provisions contained in this section would impose new requirements on recipient governments in reporting to their constituents proposed or actual uses of funds received under this Act.

The proposed use (designated planned use in the 1972 Act) and the actual use report provisions are reversed in their order of presentation in this section and contain the following requirements:

(a) Reports on Proposed Use of Funds—State and local governments which expect to receive funds under this Act are required to submit proposed use reports to the Secretary of the Treasury for entitlement periods which begin on or after January 1, 1977. The contents of such reports are expanded by the following provisions: (1) Governments which expect to receive funds must not only report how they expect to spend their allotments, but they must also provide comparative data on the use made of the funds received during the two immediately preceding entitlement periods. (2) Such reports must also budget. (3) Furthermore, they must also indicate whether the proposed use will be spent for a new activity, to expand or continue an existing activity, or for tax stabilization or reduction.

(b) Reports on Use of Funds—This amended subsection also expands the contents of actual use reports which must be submitted by recipient governments to the Secretary of the Treasury in the following ways: (1) Recipient governments are required to make such reports available to the public for inspection and reproduction. (2) In addition to reporting how their allotments have been spent or obligated, they must also report how they have been appropriated by the recipient. (3) As with the proposed use report, they are required to show the relationship of these funds to the relevant functional items in the recipient government's budget. (4) Furthermore, they must explain all differences between how they had proposed to use the funds and how they were actually spent during an entitlement period.

(c) Public Hearings Required—This is a new subsection which is designed to assure that citizens will have a greater input in decisionmaking with respect to uses made of these funds by recipient governments. It requires State and local government recipients, prior to publication of proposed use reports and prior to adoption of their budget, to hold the following hearings:

(1) *Prereport hearing.*—Each State and local unit of government which expects to receive funds under this Act is required, with respect to entitlement periods which begin on or after January 1, 1977, and after adequate public notice is given, to hold at least one public hearing during which citizens are to be given an opportunity to make recommendations regarding possible uses which may be made of their government's allotment of these funds. Such a hearing must be held at least seven calendar days before submission of the proposed use report. An additional provision is inserted which permits governing units to waive this requirement, in whole or in part, in accordance with regulations prescribed by the Secretary of the Treasury if the cost of such a hearing is high in relation to the amount of funds it receives. Thus this provision waives this requirement for those governmental units which receive relatively small amounts under this legislation.

(2) *Prebudget hearing.*—Recipient governments, with respect to entitlement periods which begin on or after January 1, 1977, are required to hold at least one public hearing during which their citizens may present written or oral comments and may submit questions concerning the proposed use of funds received under this Act and the relationship of such funds to the entire budget of the recipient government. Such hearings must be held not less than seven calendar days before adoption of the budget. It is required that they be held at a place and at a time which would encourage public attendance and participation.

(3) Waiver—Provision is made for the waiver of paragraph (1) or (2) in certain cases where compliance would be prohibitively costly or incompatible with local law.

(d) Notification and Publicity of Public Hearings; Access to Budget Summary and Proposed and Actual Use Reports—This subsection expands the provisions of Section 121(c) of the existing law which sets forth requirements for newspaper publication and publicity of planned and actual use reports. Under this amending legislation State and local governments which expect to receive funds under the Act are subject to the following requirements with respect to entitlement periods which begin on or after January 1, 1977:

(A) Thirty days before the pre-budget hearing authorized in subsection (c) (2), they must publish in at least one newspaper of general circulation, the proposed use report which is required under subsection (a) along with a summation of their proposed budget and notification of the time and place where the pre-budget hearing will be held. They must also make available for inspection and reproduction by the public, copies of the proposed use report, the narrative summary explaining the proposed budget, and a copy of the government's official budget document. Provision is also made that the requirements for publication of the proposed use reports and the narrative summaries may be waived in whole or part, in accordance with regulations of the Secretary of the Treasury where the publication costs would be burdensome in relation to the amount of funds a State or local unit of government would receive, or where such publication is otherwise impractical or not feasible. Such documents are to be made available at principal State and local government offices or at public libraries.

(B) Within 30 days after adoption of its budget, State and local recipient governments are required to publish conspicuously in at least one newspaper of general circulation an explanation of its official budget, including changes made from the proposed budget and the relationship of the use of funds under this Act to the relevant functional items in such budget. It is also required that this summary shall be made available for inspection and reproduction by the public at principal State and local offices or at public libraries.

(e) This is a new subsection which requires that copies of the proposed use and actual use reports filed with the Secretary of the Treasury by recipient governments shall be furnished by the Secretary of the Treasury to the Governor of the State in which the unit of government is located. Such reports are to be in such manner or form as the Secretary of the Treasury may prescribe by regulation.

(f) This is a new subsection requiring that the proposed use report be filed with the area-wide organization in the metropolitan area which is formally charged with carrying out the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, section 401 of the Intergovernmental Cooperation Act of 1968, or Section 302 of the Housing and Community Development Act of 1974.

Section 10(b)

This subsection amends Section 123 of the Act by adding at the end, the following new subsection (d) which authorizes the Secretary of the Treasury to include in his annual report submitted to Congress on the implementation and administration of the Act a comprehensive and detailed analysis of the following:

(d)(1) Measures taken to comply with Section 122, the nondiscrimination provision, including a description of the nature and the extent of any noncompliance and the status of all pending complaints;

(2) The extent to which citizens have become involved in decision-making with respect to use of funds made available to recipient jurisdictions;

(3) The extent to which recipient jurisdictions have complied with Section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c);

(4) The manner in which the funds distributed have been used, including the net fiscal impact, if any, in recipient jurisdictions;

(5) Significant problems which have arisen in the administration of the Act and proposals to remedy such problems through legislation.

A further provision is inserted which would amend Section 105 (a) (2) to provide that the date when the Secretary of the Treasury is required to submit an annual report to Congress on the operation of the trust fund and on other aspects of this program is changed from March 1 to January 15 of each year.

Section 11—Nondiscrimination; enforcement

Section 11(a)

This subsection amends Section 122 of the Act in its entirety.

This Bill provides that no person is to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government on the basis of race, color, religion, sex, national origin, age, or handicapped status.

The prohibition against discrimination is strengthened in five major ways. First, the Bill requires that all activities of a recipient government be free from discrimination, not only activities which are funded with shared revenue. However, this provision does not apply if a recipient government can prove, by "clear and convincing evidence," that the activities alleged to be discriminatory are not funded by shared revenues. Second, to the prohibition is enlarged to include a prohibition of discrimination based on religion, age, and handicapped status in addition to race, color, national origin and sex in the present Act. Third, the Secretary of the Treasury is directed to take certain steps, which may result in the suspension or termination of payments, to enforce the nondiscrimination provisions. Fourth, the filing of a lawsuit by the Attorney General alleging a pattern or practice of prohibited discrimination can result in the suspension of Revenue Sharing payments. Fifth, the Secretary of the Treasury is required to enter into cooperative agreements with federal and state agencies providing for the coordination and the sharing of civil rights personnel and resources.

The Secretary must send out noncompliance notices after any Federal or State court or Federal or State administrative agency has found that a recipient government has engaged in a pattern or practice of prohibiting discrimination. In order for a Federal or State agency finding to trigger notice by the Secretary, the agency must have provided the respondent with adequate notice and opportunity for a hearing in accordance with comparable provisions of the Administrative Procedures Act. The noncompliance notice must be sent within ten days after publication of, or receipt of notice of, the court or agency findings of prohibited discrimination.

A noncompliance notice must also be issued whenever a thorough Treasury investigation (which must include an opportunity for the recipient to make a submission of documents) leads to a determination of discrimination. This notice must be sent within 10 days after a Treasury determination of noncompliance.

A ninety-day period automatically begins to run from the date the noncompliance notice is issued. At the end of that period, if neither voluntary compliance nor a compliance agreement have been achieved, or preliminary relief has not been granted, entitlement payments to the recipient government are to be suspended.

The right to a preliminary hearing for the purpose of deferring the suspension of funds applies to those cases where a noncompliance notice was based upon a Treasury investigation. In all other cases, noncompliance notices are triggered only after courts and agencies have already afforded the recipient government an opportunity for a hearing on the discrimination charge.

The suspension is effective for no longer than 120 days, or if there is a compliance hearing, no longer than 30 days after the conclusion of the hearing. The suspension will be lifted and payments resumed after the recipient jurisdiction enters into a compliance agreement approved by the Secretary and the Attorney General or after the government comes into full compliance with a final order or judgment of a federal or state court or is otherwise found to be in compliance by such a court. However, in the case of compliance with a final order, payments are not to be resumed unless the final order or judgment complied with addresses all matters raised in the noncompliance notice issued by the Secretary.

The Bill allows the recipient government to obtain a hearing on the merits at anytime after it receives the noncompliance notice and before the end of the 210th day following such notice. This compliance hearing must commence within 30 days after the request is made and the Secretary must make a finding as to whether the recipient is in compliance with the nondiscrimination provisions within 30 days after the conclusion of the noncompliance hearing.

If the Secretary finds that the recipient is in compliance, any suspended funds shall be released and future payments made. If the Secretary determines that the jurisdiction is not in compliance, Treasury is required to terminate the payment of revenue sharing funds and to notify the Attorney General in order that the Attorney General may institute an appropriate civil action. The Secretary may also seek repayment of revenue sharing funds if appropriate.

The Secretary must make a determination of compliance or noncompliance in all cases. If no compliance hearing is held, these determinations must be made by the 210th day after the issuance of the noncompliance notice. If the recipient government has been aggrieved by the Secretary's determination that government may seek judicial review of the finding pursuant to Section 143 of the Act.

Revenue sharing funds are to be withheld upon the filing of a lawsuit by the Attorney General alleging that a recipient government has engaged in a pattern or practice of discriminatory conduct on the basis of race, color, religion, sex, national origin, age, or handicapped status. A 45-day waiting period begins after the filing of the suit. During the 45-day period, either party can obtain preliminary relief ordering the deferral of the suspension. Otherwise, suspension remains effective until the court orders suspended payments to be released and further payments to be paid.

The Bill requires the Secretary to enter into cooperative agreements with appropriate state agencies and with other federal agencies. The agreement must provide for the sharing of civil rights enforcement personnel and resources and require that the Attorney General immediately notify the Secretary of any lawsuits alleging a pattern or practice of discrimination instituted against a recipient government.

Section 11(b)

This subsection adds a new section 124 and a new section 125 to Subtitle B of Title 1 of the Act.

Section 124, entitled "Complaints and Compliance Review," mandates the Secretary of the Treasury to promulgate regulations establishing reasonable time limits within which the Treasury and cooperating agencies must respond to a complainant alleging prohibited discrimination in a recipent government. The regulations must include, but are not limited to, time limits for instituting an investigation, making a determination of alleged discrimination and advising the complainant of the status of the complaint. The regulations must also establish time limits within which the Secretary must conduct audits and reviews of the compliance activities of recipient governments.

Section 125—"Private Civil Actions" allows a court to grant reasonable attorney fees to a prevailing plaintiff in a lawsuit enforcing the Act. The Section also allows the Attorney General to intervene in any lawsuit of general public importance enforcing the Act and provides the United States shall be entitled to the same relief as if it had instituted the action.

Section 12—Auditing and Accounting

Subsection (a) is a conforming amendment to change the language of section 123(a)(5)(A), which relates to the requirement that State and local governments, in order to qualify for payments under this Act, use certain fiscal, accounting and auditing procedures. Under this amendment the language is changed to conform with amendments which are made to Section 123(c) under Section 10(b) of this bill.

Subsection (b) amends Section 123(c) as follows:

(1) *In general.*—This provision is the same as that provided in section 123(c)(1) except that it specifically states that the Secretary of the Treasury is authorized to accept an audit by a State or local unit of government of funds they receive under this Act if he determines that their audit procedures are reliable. Under the 1972 law, only State governments are authorized to make an audit of both State and local government expenditures for submission to the Secretary of the Treasury. Furthermore, under this amendment, such audits are to be conducted in compliance with a new paragraph (2) relating to independent audits.

(2) *Independent audits.*—This new paragraph is inserted which authorizes the Secretary of the Treasury to promulgate no later than March 31, 1977, regulations which require State and local government recipients to conduct an independent audit of their finances during each fiscal year. Such regulations shall also include a provision which permits more simplified procedures or less frequent audits for those governmental units where the cost of such may be unreasonably burdensome in comparison to the amount of allotment they receive.

These regulations shall provide further that such audit reports shall be made available to the public.

(3) *Comptroller General shall review compliance.*—This provision remains unchanged except that it is changed from paragraph (2) to paragraph (3).

SECTION BY SECTION—DAVIS BACON ACT

Section 13

This section amends Section 123(a)(6) of the Act in its entirety.

The Bill provides that a recipient government must assure the Secretary of the Treasury that all laborers and mechanics employed in the performance of work on any construction project financed with shared revenue will be paid wages at rates not less than those prevailing on similar construction projects in the locality in accordance with the Davis Bacon Act as amended, and that with respect to these labor standards, the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 and Section 2 of the Act of June 13, 1934, as amended.

The Bill broadens the coverage of the Davis Bacon Act to include construction projects financed with 25 percent or less shared revenue and to include temporary employees of recipient governments. An express exemption exists for regular or permanent employees of recipient governments.

Section 14—Prohibition of Use for Lobbying Purposes

Section 123 of the Act is amended by adding at the end a new subsection which prohibits any State or local government recipient from using, directly or indirectly, any part of its allocation of funds received under this Act for lobbying activities which are for the purpose of influencing legislation relating to provisions of this Act.

Section 15—Supplemental Fiscal Assistance

This section adds a new Subtitle D, Supplemental Fiscal Assistance.

Section 161—Short Title

This subtitle is cited as the Supplemental Fiscal Assistance Act of 1976.

Section 162—Payments to State and Local Governments

Each State and local government is to be paid by the Secretary of the Treasury, out of amounts appropriated under this subtitle, an amount determined by the allocation procedures under Section 164 for each entitlement period. Payments are to be made in installments, but not less often than once each quarter. Payments are to be made not later than five days after the close of each quarter, and may be made on the basis of estimates. Whenever a State or local government has been over- or underpaid, adjustments are required.

Section 163—Authorizations

Any funds that Congress deems necessary to adequately fund the Supplemental Fiscal Assistance program are authorized for appropriation for each entitlement period beginning on or after January 1, 1977; however, there will be no authorization for any entitlement period unless funds provided under Section 105(c)(1) equals: (1) $4,875,000,000 for the entitlement period January 1, 1977, through September 30, 1977, or (2) $6,500,000,000 for any 12-month entitlement period thereafter. Any funds authorized in excess of these amounts under Section 105(c)(1) must be distributed as an entitlement in accordance with this subtitle. Any additional funds for distribution under the provisions of subtitle D must be appropriated in accordance with the authorization provision in section 163(b).

Section 164—Eligibility; Determination of Amount of Payments

(a) No State or local government is eligible to receive any payments under this subtitle unless its entitlement under Section 167 or 168 exceeds its entitlement under Section 107 or 108. In other words, each government will receive an amount which is at least equal to the amount provided by Section 107 or 108.

(b) Subject to the eligibility provision of subsection (a), each State and local government will be paid the amount by which its entitlement under Section 167 or 168 exceeds its entitlement under Section 107 or 108 unless affected by (c) (1) or (2) which follows.

(c)(1) If the amount available under Section 163(a) and (b) for any entitlement period for making payments under this Subtitle is not sufficient to pay the total incremental amounts, then each payment for that period would be ratably reduced. If, after payments have been ratably reduced, additional funds become available for any entitlement period, the reduced payments must be ratably increased.

(c)(2) If the payment to any local government, other than a county government, is less than $2,500 ($1,875 for a 9-month entitlement period) or is waived for any entitlement period, then in lieu of being paid to the local unit, the amount will be added to and will become part of the payment of the county government.

Section 165—Management of Funds

(a) Any funds appropriated pursuant to Section 163(f) are to remain available without fiscal year limitation and are to be used only for payments to State and local governments eligible to receive payments under this subtitle. By January 15 of each year, the Treasury Secretary must report to Congress on the operations and payments under this subtitle.

(b) Appropriated amounts not used for payments to State and local governments are to be transferred to the general fund of the Treasury.

Section 166—Computation of Allocation Among States

The amount authorized under Section 105(c)(1) is to be allocated among the States for each entitlement period as follows:

(a) Allocation on the basis of income factor: Forty percent is to be distributed according to a formula which multiplies the population of each State by the income factor of that State. The formula then compares the resulting product for a State with the sum of the products similarly determined for all States.

(b) Allocation on the basis of tax effort factor: Sixty percent is to be distributed according to a formula which allocates among the States in the same proportion as the amount allocated to each State under subsection (c) bears to the sum of the amounts allocated to all States.

(c)(1) For purposes of subsection (f) the amounts allocated to a State under this subsection should be determined under paragraph (2) or (3), whichever allocates the higher amount.

(2) General Tax Effort Amount: The amount allocated to a State under this paragraph would be determined by a formula which multiplies State population by the State general tax effort factor. The formula then compares the resulting product for a State with sum of the products similarly determined for all States.

(3) Income Tax Effort Amount: The amount allocated to a State under this paragraph would be determined by a formula which multiplies State population by the State income tax effort factor. The formula then compares the resulting product for a State with the sum of the products similarly determined for all States.

Section 167—Entitlements of State Governments

(a) Division between State and local governments. Each State government is entitled to receive one-third of the amount allocated to the State area for each entitlement period. The remaining two-thirds of the amount allocated to the State area is to be allocated among local units of government as described in Section 168.

(b) State must maintain transfers to local governments.

(1) Each State government must continue to use its own funds to assist all units of local government within the State to the same extent that had been done previously. Accordingly, a State government may receive its total entitlement for the period beginning on or after January 1, 1977, only if it distributes as much to its local governments in the aggregate from its own sources, on the average during that entitlement period and the immediately preceding entitlement period, as it did in the one-year period beginning July 1, 1975, or, until data on this period are available, the most recent one-year period. If it fails to do so, the State's entitlement will be reduced by the amount of reduction in its aid to local governments. Any reduction is to be treated as a distribution by the State to its local governments for that period.

(2) When a State has assumed responsibility for a category of expenditures which was the responsibility of its local governments prior to January 1, 1977, the amount it must distribute to its local governments may be reduced by an amount equal to the increased State spending out of its own sources for the assumed category.

(3) When a State has conferred new taxing authority on one or more of its local governments after January 1, 1977, the amount it must distribute to its local governments may be reduced by an amount equal to the greater amount of either (1) taxes collected under the new taxing authority by the local governments or (2) by the amount of revenue loss to the State by reason of the new taxing authority conferred on local governments. If the new taxing authority is merely an increase in a previously authorized tax, no amount can be treated as collected by the exercise of new taxing authority by local governments unless the Secretary of the Treasury determines that the State has decreased a related State tax.

(4) For the entitlement period January 1, 1977, through September 30, 1977, the aggregate amounts taken into account under paragraph (1) will be three-fourths of the amounts which would normally be taken into account.

(5) If the Secretary determines that a State has not maintained its effort and that a reduction in its entitlement should be made, he must give the State reasonable notice and opportunity for a hearing. Afterwards, if he continues to believe that an entitlement reduction should be made, he must determine the amount of such reduction, notify the governor of the State that the entitlement will be reduced because of the State's failure to maintain its effort, and withhold from subsequent payments an amount equal to the reduction in the State's maintenance of effort.

(6) After any judicial review under Section 143, an amount equal to the reduction of any State government must be made available for distribution to the State's local governments in accordance with Section 168. If, because of the limits imposed by Section 168, any portion of the funds cannot be distributed to local governments, they will be transferred to the general fund of the Treasury.

Section 168—Entitlements of Local Governments

(a) Allocation among county areas: The two-thirds amount allocated to a State's local governments for any entitlement period will be further allocated among a State's county areas according to a formula which multiplies county area population by the county area tax effort factor, by the county area income factor. The formula then compares the resulting product for a county area with the sum of the products similarly determined for all county areas within a State. In other words, each county area share is determined by its relative standing among all county areas within a State on the basis of population, tax effort, and income.

(b) Allocation to county governments, municipalities, townships, etc.:

(1) County governments.—The funds allocated to a county area are then allocated between the county government and the aggregate of other general purpose local units in that county on the basis of their relative adjusted taxes.

(2) Other units of local government:—After the funds allocated to a county area have been divided between a county government and the other local units, the local government's share is divided among the eligible units of local government according to the same three-factor formula that was used to distribute funds among county areas, except that an individual government's share is dependent on its population, tax effort, and income in relation to the population, tax effort, and income of all other eligible units within that particular county area.

(3) Township governments:—If one or more townships is located in the county area, then these governments will be treated as local units of government for the purpose of making the distribution described in the preceding paragraph.

(4) Indian tribes and Alaskan native villages:—If a State has an Indian tribe or Alaskan native village with a recognized governing body which performs substantial governmental functions, then before the allocation among county areas, as described in (a) above, each tribe or village will be allocated a portion of the two-third local government share on the basis of the relative population of that tribe or village within the State compared to the population of the State as a whole. If

such an allocation applies, the total amount allocated to tribes and villages will be subtracted from the local governments' two-thirds share. If the governing body of a tribe or village waives the entitlement for any entitlement period, then the provisions of this paragraph are not applicable resulting in the distribution of the waived amount among all other local governments within the State.

(5) Rule for small units of government:—A special allocation rule can be used for units of local government (other than a county government) which have a population not in excess of 500. If the Secretary of the Treasury determines that the data available for any entitlement period for such small units are not adequate for the application of the three-factor formula used for distributions to local governments, he may allocate funds to these governments on the basis of their population to the total population of all governments located in the county area. If this provision applies to any county area, the amount to be allocated among other units of local government in that county area for that entitlement period will be reduced accordingly.

(6) Entitlement.—

(A) *In general.*—The entitlement of any unit of local government for any entitlement period is the amount allocated to it by this subsection, except as provided by (B), (C), or (D) below.

(B) *Maximum per capita entitlement.*—The maximum limitation for any county area or unit of local government (other than a county government) in the State is 300 percent of the per capita allocation to all local governments in the State.

(C) *Limitation.*—A county or local government may not receive an allocation that exceeds 50 percent of its adjusted taxes plus intergovernmental transfers of revenue.

(D) *Entitlement less than $2,500, or governing body waives entitlement.*—If any local government below the county government level receives an entitlement of less than $2,500 for any annual entitlement period ($1,875 for a nine-month entitlement period) or if the local government's governing body waives its entitlement for any entitlement period, then the amount of the entitlement will become part of the county government's entitlement in lieu of being paid to the local unit.

(7) Adjustment of Entitlement.—

(A) *In General.*—In adjusting the allocation of any county area or local government, the Secretary must make any adjustment required by the 300% constraint first, any adjustment required by the 50% limitaton second, and any adjustment required by a waiver or the $2,500 minimum payment third.

(B) *Adjustment for application of maximum per capita entitlement.*—In the course of making adjustments to the allocations of county areas or units of local governments under the maximum constraint provision, the Secretary is to make adjustments to the county areas before adjustments are made to local units of government within the counties.

(C) *Adjustment for application of limitation.*—If the Secretary reduces the allocation to any unit of local government due to application of the 50% constraint, the amount of that reduction will be added to the allocation of the next higher level or government. In the case of a municipal or township government, the amount would go to the county government. In the case of a county government, the amount will go to the State government.

Section 169.—Definitions and Special Rules for Application of Formulas

(a) (1) *Population.*—Population is to be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(a) (2) *Exempt income.*—Exempt income is to be one-fourth of the annual income designated by the Bureau of the Census as the low-income level for a family of four.

(a) (3) *Aggregate exempt income.*—Aggregate exempt income for any unit of government is to be the population of the government times the exempt income as defined in paragraph (2) above.

(a) (4) *Income.*—Income is to be total money income from all sources, as determined by Census for general statistical purposes.

(a) (5) *Dates for determining allocations and entitlements.*—The determination of allocations and entitlements for each entitlement period must be made three full months preceding each entitlement period, unless regulations provide otherwise.

(a) (6) *Intergovernmental transfers.*—An intergovernmental transfer is an amount received from another government as a share in financing or as reimbursement for the performance of governmental functions. Only those items classified for general statistical purposes by the Bureau of the Census as intergovernmental transfers will be considered.

(a) (7) Data used; uniformity of data.—

(A) The most recently available data provided by the Bureau of the Census or the Commerce Department will be used for allocation purposes, except as provided in paragraph (B) which follows.

(B) The Treasury Secretary is authorized to use additional data (including data based on estimates) when he determines that data referred to in the above paragraph do not reflect the most recent developments or are not comprehensive enough to provide for equitable allocations. He must issue the necessary regulations to carry out this provision.

(b) *Income factor.*—The income factor of a State, county area, or local government is a fraction. The numerator is composed of the number of persons in families below the low-income level and the number of unrelated individuals 65 years old or over who are below the low-income level. In addition, the numerator also includes those persons in families and unrelated individuals 65 years old or over whose incomes are between 100 and 125% of the low-income level if they reside in an urbanized area's central city. The denominator is composed of the number of persons in families and the number of unrelated individuals 65 years old and over regardless of their income level. The terms used in this paragraph are defined in accordance with definitions used by the Bureau of the Census for general statistical purposes.

(c) *General tax effort factor of States.*—The general tax effort factor for any State for any entitlement period is defined as the net State and local taxes collected during the most recent reporting year divided by the total money income less aggregate exempt income (defined in subsection (a), paragraph (3) above) attributed to a State. The State and local tax used in the computation of a State's general tax effort factor are defined as the compulsory contributions exacted by a State, local government, or any other political subdivision of a State for public purposes as determined by the Bureau of the Census for general statistical purposes. Items to be specifically excluded from the State and local tax figure are employer-employee assessments and contributions to retirement and social insurance systems and special assessments for capital outlay. The State and local taxes to be taken into account are those for the most recent year available from the Bureau of the Census before the close of an entitlement period.

(d) *Income tax collections of States.*—A State's income tax collections for any entitlement period are defined as the net amount collected from the State individual income tax during the last calendar year which ended before the beginning of an entitlement period. The State individual income tax is defined as a tax imposed upon the income of individuals by a State and described under Section 164(a)(3) of Title 26, United States Code, as a State income tax.

(e) *Income tax effort factor.*—The State income tax effort factor for any entitlement period is described as the State's income tax collections divided by total money income from all sources less aggregate exempt income (defined in subsection (a), paragraph (3) above).

(f) *Tax effort factor of a county area.*—The tax effort factor of any county area for any entitlement period is described as the adjusted taxes of all governments within the county area divided by the greater of (1) aggregate income less aggregate exempt income attributable to the county area, or (2) one-half of the county area's aggregate exempt income.

(g) *Tax effort factor of a unit of local government.*—The tax effort factor of any unit of local government for any entitlement period is described as that government's adjusted taxes divided by the greater of (1) aggregate income less aggregate exempt income attributable to the local government, or (2) one-half of the local government's aggregate exempt income. Adjusted taxes are described in the same general manner as the local taxes taken into account for purposes of determining the general tax effort of a State (described above in (c)). However, in calculating adjusted taxes, that portion of the taxes properly allocable to education expenses is specifically excluded.

In addition, where a county government exacts sales taxes within a municipality and transfers part or all of those taxes to the municipality without specifying the purposes for which the municipality may spend the revenues and the governor of the State notifies the Secretary of the Treasury that this is the case, the transferred taxes are to be treated as taxes of the municipalities and not as taxes of the county government.

All payments received under this subtitle must be deposited in a trust fund established by the recipient. This is identical to the requirement imposed by Section 123(a)(1) of subtitle B.

Section 16—Effective Date

This section provides that the amendments made by this bill shall become effective at the close of December 31, 1976—the date when the present program expires—with the following exceptions:

(1) The provisions of Section 5, which relate to extension and funding of the program, shall become effective on the date of enactment.

(2) The provisions of Section 7, which amend the definition of local governments, shall become effective at the close of September 30, 1977.

XII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

State and Local Fiscal Assistance Act of 1972

AN ACT to provide fiscal assistance to State and local governments, to authorize Federal collection of State individual income taxes, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

SEC. 101. SHORT TITLE.

This title may be cited as the "State and Local Fiscal Assistance Act of 1972".

SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay [out of the Trust Fund] to—

(1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.

In the case of entitlement periods ending after the date of the enactment of this Act, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

[SEC. 103. USE OF FUNDS BY LOCAL GOVERNMENTS FOR PRIORITY EXPENDITURES.

[(a) In General.—Funds received by units of local government under this subtitle may be used only for priority expenditures. For purposes of this title, the term "priority expenditures" means only—

[(1) ordinary and necessary maintenance and operating expenses for—

[(A) public safety (including law enforcement, fire protection, and building code enforcement),

[(B) environmental protection (including sewage disposal, sanitation, and pollution abatement),

[(C) public transportation (including transit systems and streets and roads),

[(D) health,

[(E) recreation,

[(F) libraries,

[(G) social services for the poor or aged, and

[(H) financial administration; and

[(2) ordinary and necessary capital expenditures authorized by law.

[(b) Certificates by Local Governments.—The Secretary is authorized to accept a certification by the chief executive officer of a unit of local government that the unit of local government has used the funds received by it under this subtitle for an entitlement period only for priority expenditures, unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.

[SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY STATE OR LOCAL GOVERNMENTS.

[(a) In General.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subtitle as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

[(b) Determinations by Secretary of the Treasury.—If the Secretary has reason to believe that a State government or unit of local government has used funds received under this subtitle in violation of subsection (a), he shall give reasonable notice and opportunity for hearing to such government. If, thereafter, the Secretary of the Treasury determines that such government has used funds in violation of subsection (a), he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent payments to such government under this subtitle an amount equal to the funds so used.

[(c) Increased State or Local Government Revenues.—No State government or unit of local government shall be determined to have used funds in violation of subsection (a) with respect to any funds received for any entitlement period to the extent that the net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the one-year period beginning July 1, 1971 (or one-half of such net revenues, in the case of an entitlement period of 6 months).

[(d) Deposits and Transfers to General Fund.—Any amount repaid by a State government or unit of local government under subsection (b) shall be deposited in the general fund of the Treasury. An amount equal to the reduction in payments to any State government or unit of local government which results from the application of this section (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

[(e) Certificates by State and Local Governments.—The Secretary is authorized to accept a certification by the Governor of a State or the chief executive officer of a unit of local government that the State government or unit of local government has not used any funds received by it under this subtitle for an entitlement period in violation of subsection (a) unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.]

SEC. 105. [CREATION OF TRUST FUND;] APPROPRIATIONS*; AUTHORIZATIONS FOR ENTITLEMENTS.*

[(a) Trust Fund.—

[(1) In General.—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Except as provided in this title, amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subtitle.

[(2) Trustee.—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.]

(a) In General.—Funds appropriated pursuant to subsections (b) and (c) shall remain available without fiscal year limitation and shall be used for the payments to State and local governments as provided by this title. The Secretary of the Treasury shall report to the Congress not later than January 15 of each year on the operations and payments under this subtitle during the preceding fiscal year.

(b) Appropriations.—

(1) In general.—There is appropriated [to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated] *for the purpose of making the payments authorized by this subtitle—*

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, $6,050,000,000;

(E) for the fiscal year beginning July 1, 1974, $6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, $6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, $3,325,000,000.

(2) Noncontiguous States adjustment amounts.—There is appropriated [to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated] *for the purpose of making the payments authorized by this subtitle—*

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, $4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, $2,390,000.

[(3) Deposits.—Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or (B) the day after the date of enactment of this Act.]

(c) Authorization of Appropriations for Entitlements.—

(1) In general.—There are authorized to be appropriated to pay the entitlements hereinafter provided in this subtitle—

(A) for the period beginning January 1, 1977, and ending September 30, 1977, $4,987,500,000; and

(B) for the fiscal years beginning on October 1 of 1977, 1978, and 1979, $6,650,000,000,

except that sums authorized hereunder for any entitlement period in excess of the amount specified in section 163(a)(1) or (2) for that period shall be distributed under subtitle D of this title as an entitlement.

(2) Noncontiguous states adjustment amounts.—There are authorized to be appropriated to pay the entitlements hereinafter provided—

(A) for the period beginning January 1, 1977, and ending September 30, 1977, $3,585000,; and

(B) for each of the fiscal years beginning on October 1 of 1977, 1978, and 1979, $4,780,000.

[(c) Transfers From Trust Fund to General Fund.—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.]

(d) Transfers to the General Fund.—The Secretary shall from time to time transfer to the general fund of the Treasury any funds available for this subtitle which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 106. ALLOCATION AMONG STATES.

[(a) In General.—There shall be allocated to each State for each entitlement period, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).]

(a) In General.—There shall be allocated an entitlement to each State—

(1) for each entitlement period beginning prior to December 31, 1976, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b); and

(2) for each entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(1) for that entitlement period which are not reserved for distribution under subtitle D, an amount which bears the same ratio to the amount so available under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

(b) Determination of Allocable Amount.—

(1) In general.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the sum of the amounts allocable to it under paragraph (2) and subsection (c).

(2) Three factor formula.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to $5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) Five factor formula.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A) 1/3 of $3,500,000,000 were allocated among the States on the basis of population,

(B) 1/3 of $3,500,000,000 were allocated among the States on the basis of urbanized population.

(C) ⅓ of $3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income.

(D) ½ of $1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E) ½ of $1,800,000,000 were allocated among the States on the basis of general tax effort.

(c) Noncontiguous States Adjustment.—

(1) In general.—In addition to amounts allocated among the States under subsection (a), there shall be allocated for each entitlement period, out of amounts appropriated under [section 105(b)(2)] *subsection (b)(2) or (c)(2) of section 105*, an additional amount to any State (A) whose allocation under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection and (B) in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code.

(2) Determination of amount.—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b)(2) for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 105(b)(2) for any entitlement period *ending on or before December 31, 1976, or authorized under section 105(c)(2) for any entitlement period beginning on or after January 1, 1977*, is not sufficient to pay in full the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) Division Between State and Local Governments.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 108.

(b) State Must Maintain Transfers to Local Governments.—

(1) General rule.—The entitlement of any State government for any entitlement period beginning on or after [July 1, 1973] *January 1, 1977*, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, [1971] *1975, or, until data on such period are available, the most recent such one-year period for which data on such amounts are available.*

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period [beginning July 1, 1971,] *utilized for purposes of such paragraph* it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of taxes collected by reason of the exercise of such new taxing authortiy by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1)(A) shall be treated as being the one-year period beginning July 1, 1972.

(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be one-half the amounts which (but for this paragraph) would be taken into account.

(6) SPECIAL RULE FOR THE PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be three-fourths of the amounts which (but for this paragraph) would be taken into account.

[(6)] (7) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

[(7)**]** (*8*) TRANSFER TO GENERAL FUND.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be transferred **[**from the Trust Fund**]** to the general fund of the Treasury on the day on which such reduction becomes final.

SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government and other than township governments) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the general tax effort factor of that local government, multiplied by the relative income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then before applying paragraph (2)—

(A) there shall be set aside for allocation under subparagraph (B) to such township governments that portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the sum of the adjusted taxes of all such township governments bears to the aggregate adjusted taxes of the county government, such township governments, and all other units of local government located in the county area, and

(B) that portion of each amount set aside under subparagraph (A) shall be allocated to each township government on the same basis as amounts are allocated to units of local government under paragraph (2).

If this paragraph applies with respect to any county area for any entitlement period, the remaining portion allocated under paragraph (2) to the units of local government located in the county area (other than the county government and the township governments) shall be appropriately reduced to reflect the amounts set aside under subparagraph (A).

(4) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (1) there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. If this paragraph applies with respect to any county area for any entitlement period, the amount to be allocated under paragraph (1) shall be appropriately reduced to reflect the amount allocated under the preceding sentence. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) RULE FOR SMALL UNITS OF GOVERNMENT.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraphs (2) and (3)(B) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) or (3)(B) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) or (3)(B) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) or (3)(B) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) ENTITLEMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c)).

(B) Maximum and minimum per capita entitlement.—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106, divided by the population of that State.

(C) Limitation.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) Entitlement less than $200, or governing body waives entitlement.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $200 for any entitlement period ($100 for an entitlement period of 6 months, *$150 for an entitlement period of 9 months*), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) Adjustment of entitlement.—

(A) In general.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) Adjustment for application of maximum or minimum per capita entitlement.—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) Adjustment for application of limitation.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

(c) Special Allocation Rules.—

(1) Optional formula.—A State may by law provide for the allocation of funds among county areas, or among units of local government (other than county governments), on the basis of the population multiplied by the general tax effort factors of such areas or units of local government, on the basis of the population multiplied by the relative income factors of such areas or units of local government, or on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsection (a), or by paragraphs (2) and (3) of subsection (b), shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall—

(A) provide for allocating 100 percent of the aggregate amount to be allocated under subsection (a), or under paragraphs (2) and (3) of subsection (b);

(B) apply uniformly throughout the State; and

(C) apply during the period beginning on the first day of the first entitlement period to which it applies and ending on [December 31, 1976.] *September 30, 1980.*

(2) Certification.—Paragraph (1) shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

(d) Governmental Definitions and Related Rules.—For purposes of this title—

[(1) Units of local government.—The term "unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaska native village which performs substantial governmental functions.]

(1) Unit of local government.—

(A) In general.—The term "unit of local government" means the government of a county, municipality, or township which is a unit of general government as determined by the Bureau of the Census for general statistical purposes, and

which, with respect to entitlement periods beginning on or after October 1, 1977, meets the requirements specified in subparagraph B, and imposes taxes or receives intergovernmental transfers for substantial performance of at least two of the following services for its citizens: (i) police protection; (ii) courts and corrections; (iii) fire protection; (iv) health services; (v) social services for the poor or aged; (vi) public recreation; (vii) public libraries; (viii) zoning or land use planning; (ix) sewerage disposal or water supply; (x) solid waste disposal; (xi) pollution abatement; (xii) road or street construction and maintenance; (xiii) mass transportation; and (xiv) education. Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. For the purposes of this subsection a unit of local government shall be deemed to impose a tax if that tax is collected by another governmental entity from the geographical area served by that unit of local government and an amount equivalent to the net proceeds of that tax are paid to that unit of local government.

(B) Limitation.—To be considered a unit of local government for purposes of this Act, at least 10 per centum of a local government's total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property taxes) in the most recent fiscal year must have been for each of two of the public services listed in subparagraph (A), except that the foregoing restriction shall not apply to a unit of local government (i) which substantially performs four or more of such public services, or (ii) which has performed two or more of such public services since January 1, 1976, and continues to provide two or more such public services.

(2) Certain areas treated as counties.—In any State in which any unit of local government (other than a county government) constitutes the next level of government below the State government level, then, except as provided in the next sentence, the geographic area of such unit of government shall be treated as a county area (and such unit of government shall be treated as a county government) with respect to that portion of the State's geographic area. In any State in which any county area is not governed by a county government but contains two or more units of local government, such units shall not be treated as county governments and the geographic areas of such units shall not be treated as county areas.

(3) Townships.— The term "township" includes equivalent subdivisions of government having different designations (such as "towns"), and shall be determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes.

(4) UNITS OF LOCAL GOVERNMENT LOCATED IN LARGER ENTITY.—A unit of local government shall be treated as located in a larger entity if part or all of its geographic area is located in the larger entity.

(5) ONLY PART OF UNIT LOCATED IN LARGER ENTITY.—If only part of a unit of local government is located in a larger entity, such part shall be treated for allocation purposes as a separate unit of local government, and all computations shall, except as otherwise provided in regulations, be made on the basis of the ratio which the estimated population of such part bears to the population of the entirety of such unit.

(6) BOUNDARY CHANGES, GOVERNMENTAL REORGANIZATION, ETC.—If, by reason of boundary line changes, by reason of State statutory or constitutional changes, by reason of annexations or other governmental reorganizations, or by reason of other circumstances, the application of any provision of this section to units of local government does not carry out the purposes of this subtitle, the application of such provision shall be made, under regulations prescribed by the Secretary, in a manner which is consistent with such purposes.

SEC. 109. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—For purposes of this subtitle—

(1) POPULATION.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) URBANIZED POPULATION.—Urbanized population means the population of any area consisting of a central city or cities of 50,000 or more inhabitants (and of the surrounding closely settled territory for such city or cities) which is treated as an urbanized area by the Bureau of the Census for general statistical purposes.

(3) INCOME.—Income means total money income received from all sources, as determined by the Bureau of the Census for general statistical purposes.

(4) PERSONAL INCOME.—Personal income means the income of individuals, as determined by the Department of Commerce for national income accounts purposes.

(5) DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) INTERGOVERNMENTAL TRANSFERS.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) DATA USED; UNIFORMITY OF DATA.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) Use of estimates, etc.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he may use such additional data (including data based on estimates) as may be provided for in regulations.

(b) Income Tax Amount of States.—For purposes of this subtitle—

(1) In general.—The income tax amount of any State for any entitlement period is the income tax amount of such State as determined under paragraphs (2) and (3).

(2) Income tax amount.—The income tax amount of any State for any entitlement period is 15 percent of the net amount collected from the State individual income tax of such State during 1972 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(3) Ceiling and floor.—The income tax amount of any State for any entitlement period—

(A) shall not exceed 6 percent, and

(B) shall not be less than 1 percent.

of the Federal individual income tax liabilities attributed to such State for taxable years ending during 1971 or (if later) during the last calendar year ending before the beginning of such entitle-
vidual income tax liabilities attributed to any State for any period
such State and described as a State income tax under section 164(a)(3) of the Internal Revenue Code of 1954.

(5) Federal individual income tax liabilities.—Federal indi-
shall be determined on the same basis as such liabilities are determined for such period by the Internal Revenue Service for general statistical purposes.

(c) General Tax Effort of States.—

(1) In general.—For purposes of this subtitle—

(A) General tax effort factor.—The general tax effort factor of any State for any entitlement period is (i) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by (ii) the aggregate personal income (as defined in paragraph (4) of subsection (a)) attributed to such State for the same period.

(B) General tax effort amount.—The general tax effort amount of any State for any entitlement period is the amount determined by multiplying—

(i) the net amount collected from the State and local taxes of such State during the most recent reporting year, by

(ii) the general tax effort factor of that State.

(2) State and local taxes.—

(A) Taxes taken into account.—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) MOST RECENT REPORTING YEAR.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) GENERAL TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this subtitle, the general tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the adjusted taxes of each other unit of local government within that county area, divided by

(2) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that county area.

(e) GENERAL TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this subtitle—

(1) IN GENERAL.—The general tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that unit of local government.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

(f) RELATIVE INCOME FACTOR.—For purposes of this subtitle, the relative income factor is a fraction—

(1) in the case of a State, the numerator of which is the per capita income of the United States and the denominator of which is the per capita income of that State;

(2) in the case of a county area, the numerator of which is the per capita income of the State in which it is located and the denominator of which is the per capita income of that county area; and

(3) in the case of a unit of local government, the numerator of which is the per capita income of the county area in which it is located and the denominator of which is the per capita income of the geographic area of that unit of local government.

For purposes of this subsection, per capita income shall be determined on the basis of income as defined in paragraph (3) of subsection (a).

(g) ALLOCATION RULES FOR FIVE FACTOR FORMULA.—For purposes of section 106(b)(3)—

(1) ALLOCATION ON BASIS OF POPULATION.—Any allocation among the States on the basis of population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the population of such State bears to the population of all the States.

(2) ALLOCATION ON BASIS OF URBANIZED POPULATION.—Any allocation among the States on the basis of urbanized population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the urbanized population of such State bears to the urbanized population of all the States.

(3) ALLOCATION ON BASIS OF POPULATION INVERSELY WEIGHTED FOR PER CAPITA INCOME.—Any allocation among the States on the basis of population inversely weighted for per capita income shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as—

(A) the population of such State, multiplied by a fraction the numerator of which is the per capita income of all the States and the denominator of which is the per capita income of such State, bears to

(B) the sum of the products determined under subparagraph (A) for all the States.

(4) ALLOCATION ON BASIS OF INCOME TAX COLLECTIONS.—Any allocation among the States on the basis of income tax collections shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the income tax amount of such State bears to the sum of the income tax amounts of all the States.

(5) ALLOCATION ON BASIS OF GENERAL TAX EFFORT.—Any allocation among the States on the basis of general tax effort shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the general tax effort amount of such State bears to the sum of the general tax effort amounts of all the States.

Subtitle B—Administrative Provisions

SEC. 120. MODERNIZATION OF GOVERNMENT

(*a*) *Policy and Purpose.—In order that funds provided under this Act shall encourage the modernization and revitalization of State and local governments, each State shall submit an annual report to the Secretary describing any steps it has taken to achieve the goal set forth in this section.*

(*b*) *State Master Plan.—It is established as a goal that each State government prepare and develop in accordance with subsections* (*c*), (*d*), *and* (*e*) *a master plan and timetable for modernizing and revitalizing State and local government.*

(*c*) *Preparation of Master Plan and Timetable.—Prior to submitting the State's annual report to the Secretary, the State's chief executive officer may submit a proposed master plan and timetable to the State legislature and to the chief executive officer and legislative body of each county government, township government, and other unit of local government, including, for these purposes, special purpose governments not covered by the definition of unit of local government in section 108*(*d*)(*1*). *The proposed master plan and timetable shall also be made available to the public by publication in newspapers throughout the State. After issuance of any proposed master plan and timetable, there shall be a period of not less than 120 days for local officials and citizens of the State to comment on the proposed master plan and timetable, in accordance with a procedure for such comment promulgated by the chief executive officer of the State. The chief executive officer of the State shall take into consideration such comments in preparing the final master plan and timetable. A final master plan and timetable shall be submitted to the State legislature which shall vote whether or not to submit such plan to the Secretary.*

(*d*) *Contents of Master Plans and Timetables.—*

(*1*) *In general.—A State's master plan and timetable may contain:*

(*A*) *a set of proposals for substantially improving the effectiveness, economy and equity of State and local government;*

(*B*) *the steps* (*constitutional, legislative, or administrative*) *necessary to effectuate those proposals; and*

(*C*) *a timetable for effectuating each proposal within a reasonable period.*

(2) *Criteria.—The following broad criteria may be employed in the development of the provisions of the master plan and timetable:*

(*A*) *Function.—Governmental responsibilities should be assigned to State and sub-State governments with the objective of providing all residents with at least a minimal level of public services.*

(*B*) *Structure.—The organization of State and sub-State governments should substantially reduce the number of limited function general governments and special districts.*

(*C*) *Fiscal integrity.—The system of State and local* *taxation should result in a tax burden commensurate with the fiscal capacity of the taxing unit.*

(D) Management capacity.—Improvements in the professional capacity of State and local governments should be specifically addressed.

(E) Accountability.—Broad participation of the general public in the decisionmaking process should be encouraged, and formal mechanisms of reporting the impact of such decisions should be proposed.

(e) Methods for Promoting Effectivess, Economy, and Equity in State and Local Government.—

(1) In general.—In preparing the master plan and timetable, the chief executive officer may take into consideration the following methods for promoting effectiveness, economy and equity in State and local governments:

(A) Interstate.—Arrangements, by interstate compact or otherwise for dealing with interstate regional problems, including those of metropolitan areas which overlap State lines, and for regional cooperation in such areas as health, education, welfare, conservation, resource development, transportation, recreation, and housing.

(B) State direct action.—Strengthening and modernizing of State government (by constitutional, statutory, and administrative changes), including but not limited to, modernized State borrowing powers; improved tax systems; increased financial and technical assistance to local governments; revising the terms of State aids and shared taxes to compensate for differences in total local fiscal capacity; State assumption of greater direct fiscal responsibility for basic functions; modern personnel systems; and development of minimum State standards for services at the State and local level.

(C) State action affecting localities.—Strengthening and modernizing by the State of local, rural, urban, and metropolitan governments (by constitutional, statutory, and administrative changes), including—

(i) changes designed to make local government more efficient, economical and accountable, as by—

(I) reducing the number of, or eliminating, local governments too small to provide efficient administration or possessing inadequate fiscal resources;

(II) reducing the number of special districts not subject to democratic controls, and eliminating those whose functions can be carried out by general governments;

(III) granting adequate home-rule powers to local governments of sufficient size and scope;

(IV) improving local property tax administration;

(V) authorizing local governments to utilize nonproperty taxes, coordinated at the State or regional level; and

(VI) casing rstrictions on the borrowing and taxing powers of local governments.

(ii) other changes designed to strengthen local government in metropolitan areas, as by—

(I) liberalizing municipal annexation of unincorporated areas;

(II) setting minimum standards of population and population density for proposed new incorporations;

(III) authorizing city-county consolidation, or transfers of specified functions between municipalities and counties;

(IV) authorizing intergovernmental contracts for the provision of services;

(V) authorizing municipalities to exercise extraterritorial planning, zoning, and subdivision control over unincorporated areas not subject to effective county regulation;

(VI) restricting zoning authority in metropolitan areas to metropolitan bodies, larger municipalities, counties, or the State;

(VII) authorizing the formation of regional multi-functional bodies for housing, health care, social services, parks and recreation, and water sewer facilities; and

(VIII) establishing State standards of accountability in the planning process and operations of special districts, boards, commissions and official agencies not directly subordinate to a general government.

(f) Reports and Recommendations.—The Secretary shall report to Congress at the end of each fiscal year on the progress made by each State in developing and carrying out a master plan and timetable, and based on such progress, shall make recommendations concerning the goal set forth in this section.

[SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION

[(a) Reports on Use of Funds.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each entitlement period, submit a report to the Secretary setting forth the amounts and purposes for which funds received during such period have been spent or obligated. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

[(b) Reports on Planned Use of Funds.—Each state government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1973, shall submit a report to the Secretary setting forth the amounts and purposes for which it plans to spend or obligate the funds which it expects to receive during such period. Such reports shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

[(c) PUBLICATION AND PUBLICITY OF REPORTS.—Each State government and unit of local government shall have a copy of each report submitted by it under subsection (a) or (b) published in a newspaper which is published within the State and has general circulation within the geographic area of that government. Each State government and unit of local government shall advise the news media of the publication of its reports pursuant to this subsection.]

Sec. 121 Reports on use of funds; Publication and public hearings

(a) REPORTS ON PROPOSED USE OF FUNDS.—Each State government and unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall submit a report to the Secretary setting forth the amounts and purposes for which it proposes to spend or obligate the funds which it expects to receive during such period as compared with the use of similar funds during the two immediately preceding entitlement periods. Each such report shall include a comparison of the proposed, current, and past use of such funds to the relevant functional items in its official budget and specify whether the proposed use is for a completely new activity, for the expansion or continuation of an existing activity, or for tax stabilization or reduction. Such report shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

(b) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A or D shall, after the close of each entitlement period, submit a report to the Secretary (which report shall be available to the public for inspection and reproduction) setting forth the amounts and purposes of which funds received during such period have been appropriated, spent, or obligated and showing the relationship of those funds to the relevant functional items in the government's official budget. Such report shall further provide an explanation of all differences between the actual use of funds received and the proposed use of such funds as reported to the Secretary under subsection (a). Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

(c) PUBLIC HEARINGS REQUIRED.—

(1) PRE-REPORT HEARING.—Not less than 7 calendar days before the submission of the report required under subsection (a), each State government or unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall, after adequate public notice, have at least one public hearing at which citizens shall have the opportunity to provide written and oral comment on the possible uses of such funds.

(2) PRE-BUDGET HEARING.—Not less than 7 calendar days before the adoption of its budget as provided for under State and local law, each State government or unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall have

at least one public hearing on the proposed use of funds made available under subtitles A and D in relation to its entire budget. At such hearing, citizens shall have the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to have answered questions concerning the entire budget and the relation to it of funds made available under subtitles A and D. Such hearing shall be at a place and time that permits and encourages public attendance and participation.

(3) WAIVER.—The provisions of paragraph (1) may be waived in whole or in part in accordance with regulations of the Secretary if the cost of such a requirement would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitles A and D. The provisions of paragraph (2) may be waived in whole or in part in accordance with regulations of the Secretry if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds made available under subtitles A and D in relation to its entire budget.

(d) NOTIFICATION AND PUBLICITY OF PUBLIC HEARINGS; ACCESS TO BUDGET SUMMARY AND PROPOSED AND ACTUAL USE REPORTS.—

(1) IN GENERAL.—Each State government and unit of local government which expects to receive funds under subtitle A or D for any entitlement period beginning on or after January 1, 1977, shall—

(A) 30 days prior to the public hearing required by subsection (c) (2)—

(i) publish conspicuously, in at least one newspaper of general circulation, the proposed use report required by subsection (a), a narrative summary setting forth in simple language an explanation of its proposed official budget, and a notice of the time and place of such public hearing; and

(ii) make available for inspection and reproduction by the public (at the principal office of such State government or unit of local government, at public libraries, if any, within the boundaries of such a unit of local government, and, in the case of a State government, at the main libraries of the principal municipalities of such State) the proposed use report, the narrative summary, its offical budget which shall specify with particularity each item in its official budget which will be funded, in whole or in part, with funds made available under subtitle A or D, and for, each such budget item, shall specify amount of such funds budgeted for that item and the percentage of total expenditures for that item attributable to such funds; and

(B) within 30 days after adoption of its budget as provided for under State or local law—

(i) publish conspicuously, in at least one newspaper of general circulation, a narrative summary setting forth in simple language an explanation of its official budget (including an explanation of changes from the proposed budget) and the relationship of the use of funds made available under subtitles A and D to the relevant functional items in such budget; and

(ii) make such summary available for inspection and reproduction by the public at the principal office of such State government or unit of local government, at public libraries, if any, within the boundaries of such unit of local government, and, in the case of a State government, at the main libraries of the principal municipalities of such State.

(2) Waiver.—The provisions of paragraph (1) may be waived, in whole or in part, with respect to publication of the proposed use reports and the narrative summaries, in accordance with regulations of the Secretary, where the cost of such publication would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitles A and D, or where such publication is otherwise impractical or infeasible. In addition, the 30 day provision of paragraph (1)(A) may be modified to the minimum extent necessary to comply with State and local law if the Secretary is satisfied with the citizens of the State or local government will receive adequate notification of the proposed use of funds, consistent with the intent of this section.

(e) Reports Provided to the Governor.—A copy of each report required under subsections (a) and (b) filed with the Secretary by a unit of local government which receives funds under subtitle A or D shall be provided by the Secretary to the Governor of the State in which the unit of local government is located, in such manner and form as the Secretary may prescribe by regulation.

(f) Planned Use Report to Areawide Organization.—At the same time that the proposed use report is published and publicized in accordance with this section, each unit of local government which is within a metropolitan area shall submit a copy of the proposed use report to the areawide organization in the metropolitan area which is formally charged with carrying out the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334); section 401 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231); or section 302 of the Housing and Community Development Act of 1974 (42 U.S.C. 461).

[**SEC. 122. NONDISCRIMINATION PROVISION.**

[(a) In General.—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subtitle A.

[(b) Authority of Secretary.—Whenever the Secretary determines that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or, in the case of a unit of local government, the Governor of the State in which such unit is located) of the noncompliance and shall request the Governor to secure compliance. If within a reasonable period of time the Governor fails or refuses to secure compliance, the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

[(c) AUTHORITY OF ATTORNEY GENERAL.—When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.**]**

SEC. 122. NONDISCRIMINATION PROVISION.

(a) PROHIBITION.—(1) IN GENERAL.—No person shall, on account of race, color, religion, sex, national origin, age, or handicapped status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government which government or unit receives funds made available under subtitle A or D. The provisions of this paragraph shall be interpreted—

(A) in accordance with titles II, III, IV, VI, and VII of the Civil Rights Act of 1964, as amended, title VIII of the Civil Rights Act of 1968, as amended, and title IX of the Education Amendments of 1972, with respect to discrimination on the basis of race, color, religion, sex, or national origin;

(B) in accordance with the Rehabilitation Act of 1973 with respect to discrimination on the basis of handicapped status; and

(C) in accordance with the Age Discrimination Act of 1975 with respect to discrimination on the basis of age, notwithstanding the deferred effectiveness of such Act.

(2) EXCEPTIONS.—

(A) FUNDING.—The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government proves by a preponderance of the evidence that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part, directly or indirectly, with funds made available under subtitle A or D.

(B) CONSTRUCTION PROJECTS IN PROGRESS.—The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) AUTHORITY OF THE SECRETARY.—

(1) NOTICE.—Whenever there has been—

(A) publication or receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal or State court, or by a Federal or State administrative agency (other

than the Secretary under subparagraph (B)), to the effect that there has been a pattern or practice of discrimination on the basis of race, color, religion, sex, national origin, age, or handicapped status in any program or activity of a State government or unit of local government, which government or unit receives funds made available under subtitle A or D; or

(B) a determination that a State government or unit of local government is not in compliance with subsection (a) (1) after an investigation by the Secretary, prior to a hearing under paragraph (4), but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination or the funding of such program of activity with funds made available under subtitle A or D;

the Secretary shall, within 10 days of such occurrence, notify the Governor of the affected State, or of the State in which an affected unit of local government is located, and the chief executive officer of such affected unit of local government, that such State government or unit of local government is presumed not to be in compliance with subsection (a) (1), and shall request such Governor and such chief executive officer to secure compliance. For purposes of subparagraph (A), a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5, title 5, United States Code.

(2) VOLUNTARY COMPLIANCE.—In the event the Governor or the chief executive officer secures compliance after notice pursuant to paragraph (1), the terms and conditions with which the affected State government or unit or local government agrees to comply shall be set forth in writing and signed by the Governor, by the chief executive officer (in the event of a violation by a unit of local government), and by the Secretary and the Attorney General. At least 15 days prior to the effective date of the agreement, the Secretary shall send a copy of the agreement to each complainant, if any, with respect to such violation. The Governor, or the chief executive officer in the event of a violation by a unit of local government, shall file semiannual reports with the Secretary and the Attorney General detailing the steps taken to comply with the agreement. Within 15 days of receipt of such reports the Secretary shall send a copy thereof to each such complainant.

(3) SUSPENSION AND RESUMPTION OF PAYMENT OF FUNDS.—

(A) SUSPENSION AFTER NOTICE.—If, at the conclusion of 90 days after notification under paragraph (1)—

(i) a compliance agreement has not been entered into under paragraph (2),

(ii) compliance has not been secured by the Governor of that State or the chief executive officer of that unit of local government, and

(iii) an administrative law judge has not made a determination under paragraph (4)(A) that it is likely the

State government or unit of local government will prevail on the merits,

the Secretary shall notify the Attorney General that compliance has not been secured and shall suspend further payment of any funds under subtitles A and D to that State government or that unit of local government. Such suspension shall be effective for a period of not more than 120 days, or, if there is a hearing under paragraph (4)(B), not more than 30 days after the conclusion of such hearing.

(B) RESUMPTION OF PAYMENTS SUSPENDED UNDER SUBPARAGRAPH (A).—Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Secretary and the Attorney General in accordance with paragraph (2);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, if that order or judgment covers all the matters raised by the Secretary in the notice pursuant to paragraph (1), or is found to be in compliance with subsection (a)(1) by such court; or

(iii) the Secretary finds, pursuant to paragraph (4)(B), that noncompliance has not been demonstrated.

(C) SUSPENSION UPON ACTION BY ATTORNEY GENERAL.—Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, sex, national origin, age, or handicapped status in any program or activity of a State government or unit of local government, which State government or unit of local government receives funds made available under subtitle A or D, and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Secretary shall suspend further payment of any funds under subtitles A and D to that State government or that unit of local government until such time as the court orders resumption of payment.

(4) HEARINGS; OTHER ACTIONS.—

(A) PRELIMINARY HEARING.—Within the first 30 days after notification under paragraph (1)(B), the State government or unit of local government may request an expedited preliminary hearing by an administrative law judge in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (B) of this paragraph, prevail on the merits on the issue of the alleged noncompliance. Such judge shall render a finding hereunder within the 90-day period after notification under paragraph (1)(B). A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under paragraph (3) until the 210th

day after the issuance of a notice of noncompliance under paragraph (1)(B), or until 30 days after the conclusion of hearing on the merits under subparagraph (B) of this paragraph.

(B) Compliance hearing.—At any time after notification under paragraph (1) but before the conclusion of the 120-day period referred to in paragraph (3)A, a State government or unit of local government may request a hearing, which the Secretary shall initiate within 30 days of such request. The Secretary may also initiate a hearing in case of a finding in favor of a State government or unit of local government under subparagraph (A) of this paragraph. Within 30 days after the conclusion of a hearing under this subparagraph, or, in the absence of a hearing, within 210 days after issuance of a notice of noncompliance under paragraph (1), the Secretary shall make a finding of compliance or noncompliance. If the Secretary makes a finding of noncompliance, the Secretary shall (i) notify the Attorney General of the United States in order that the Attorney General may institute a civil action under subsection (c), (ii) terminate the payment of funds under subtitles A and B, and, (iii) if appropriate, seek repayment of such funds. If the Secretary makes a finding of compliance, payment of the suspended funds shall resume as provided in paragraph (3)(B).

(5) Judicial review.—Any State government or unit of local government aggrieved by a final determination of the Secretary under paragraph (4) may appeal such determination as provided in section 143(c).

(c) Authority of Attorney General.—Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of funds made available under this title, or placing any further payments under this title in escrow pending the outcome of the litigation.

(d) Agreements Between Agencies.—The Secretary shall enter into agreements with State agencies and with other Federal agencies authorizing such agencies to investigate noncompliance with subsection (a). The agreements shall describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance with this section, and shall provide for the immediate notification of the Secretary by the Attorney General of any actions instituted under subsection (b)(3)(C), subsection (c), or under any other Federal civil rights statute or regulations issued thereunder.

SEC. 123. MISCELLANEOUS PROVISIONS.

(a) Assurances to the Secretary.—In order to qualify for any payment under subtitle A for any entitlement period beginning on or after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor of the State in which such unit is located) to the satisfaction of the Secretary that—

(1) it will establish a trust fund in which it will deposit all payments it receives under subtitle A *or D*;

(2) it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) during such reasonable period or periods as may be provided in such regulations;

[(3) in the case of a unit of local government, it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) only for priority expenditures (as defined in section 103(a)), and will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended out of such trust fund in violation of this paragraph, unless such amount is promptly repaid to such trust fund (or the violation is otherwise corrected) after notice and opportunity for corrective action;]

(4) it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues;

(5) it will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established [therefor], *in conformity with subsection (c) of this section*, by the Secretary (after consultation with the Comptroller General of the United States), *and conduct independent financial audits in accordance with generally accepted auditing standards as required by paragraph (2) of such subsection*,

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this title (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c)(2)), and

(C) make such annual and interim reports (other than reports required by section 121) to the Secretary as he may reasonably require;

(6) all laborers and mechanics employed [by contractors or subcontractors] in the performance of work on any construction project, [25 percent or more of the costs of which project are paid] *which is funded in whole or part* out of its trust fund established under paragraph (1), will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a-5), and that with respect to the labor standards specified in this paragraph the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and sec-

tion 2 of the Act of June 13, 1934[, as amended] (40 U.S.C. 276c), *except that nothing in this subsection shall be construed to cover work performed by a state or local jurisdiction with its own regular, permanent laborers or mechanics;*

(7) individuals employed by it whose wages are paid in whole or in part out of its trust fund established under paragraph (1) will be paid wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer; and

(8) in the case of a unit of local government as defined in the second sentence of section 108(d)(1) (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4).

Paragraph (7) shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the State government or unit of local government in such category are paid from the trust fund established by it under paragraph (1).

(b) Withholding of Payments.—If the Secretary determines that a State government or unit of local government has failed to comply substantially with any provision of subsection (a) or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government, he shall notify the State government or unit of local government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(c) Accounting, Auditing, and Evaluation.—

(1) In general.—The Secretary shall provide for such [accounting and auditing procedures] *audits*, evaluations, and reviews as may be necessary to insure that the expenditures of funds received under subtitle A *or D* by State governments and units of local government comply fully with [the] requirements of this title. *Such audits, evaluations, and reviews shall include such independent audits as may be required pursuant to paragraph (2).* The Secretary is authorized to accept an audit by a [State of such expenditures of a] State government or unit of local government *of its expenditures* if he determines that such audit *was conducted in compliance with paragraph (2), and that such audit* and the audit procedures of that State *government or unit of local government* are sufficiently reliable to enable him to carry out his duties under this title.

[(2) Comptroller General shall review compliance.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and

the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.]

(*2*) *INDEPENDENT AUDITS.—The Secretary shall, after consultation with the Comptroller General, promulgate regulations to take effect not later than March 31, 1977, which shall require that each State government and unit of local government receiving funds under subtitle A or D conducts during each fiscal year an audit of its financial accounts in accordance with generally accepted auditing standards. Such regulations shall include such provisions as may be necessary to assure, independent audits are conducted in accordance with such standards, but may provide, for less formal reviews of financial information, or less frequent audits, to the extent necessary to ensure that the cost of such audits not be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds available under subtitles A and D. Such regulations shall further provide for the availability to the public of financial statements and reports on audits or informal reviews conducted under this paragraph for inspection and reproduction as public documents.*

(3) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.

(*d*) *REPORT OF THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall include with the report required under section 105(a) a report to the Congress on the implementation and administration of this Act during the preceding fiscal year. Such report shall include, but not be limited to, a comprehensive and detailed analysis of the following:*

(*1*) *the measures taken to comply with section 122, including a description of the nature and extent of any noncompliance and the status of all pending complaints;*

(*2*) *the extent to which citizens in recipient jurisdictions have become involved in the decisions determining the expenditure of funds received under subtitles A and D;*

(*3*) *the extent to which recipient jurisdictions have complied with section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c) of such section;*

(*4*) *the manner in which funds distributed under subtitles A and D have been used, including the net fiscal impact, if any, in recipient jurisdictions; and*

(*5*) *significant problems arising in the administration of the Act and proposals to remedy such problems through appropriate legislation.*

(*e*) *PROHIBITION OF USE FOR LOBBYING PURPOSES.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under subtitle A or D for the purpose of lobbying or other activities intended to influence any legislation regarding the provisions of this Act. For the purpose of this subsection,* *dues paid to National or State associations shall be deemed not to have been paid from funds received under subtitle A or D.*

SEC. 124. COMPLAINTS AND COMPLIANCE REVIEWS.

By March 31, 1977, the Secretary shall promulgate regulations establishing—

(1) reasonable and specific time limits for the Secretary or the appropriate cooperating agency to respond to the filing of a complaint by any person alleging that a State government or unit of local government is in violation of the provisions of this Act, including time limits for instituting an investigation, making an appropriate determination with respect to the allegations, and advising the complainant of the status of the complaint; and

(2) reasonable and specific time limits for the Secretary to conduct audits and reviews of State governments and units of local government for compliance with the provisions of this Act.

SEC. 125. PRIVATE CIVIL ACTIONS.

(a) In any action brought to enforce compliance with any provision of this Act, the court may grant to a prevailing plaintiff reasonable attorney fees except where the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

(b) INTERVENTION BY ATTORNEY GENERAL.—In any action brought to enforce compliance with any provision of this Act, the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

Subtitle C—General Provisions

SEC. 141. DEFINITIONS AND SPECIAL RULES.

(a) SECRETARY.—For purposes of this title, the term "Secretary" means the Secretary of the Treasury or his delegate. The term "Secretary of the Treasury" means the Secretary of the Treasury personally, not including any delegate.

(b) ENTITLEMENT PERIOD.—For purposes of this title, the term "entitlement period" means—

(1) The period beginning January 1, 1972, and ending June 30, 1972.

(2) The period beginning July 1, 1972, and ending December 31, 1972.

(3) The period beginning January 1, 1973, and enging June 30, 1973.

(4) The one-year periods beginning on July 1 of 1973, 1974, and 1975.

(5) The period beginning July 1, 1976, and ending December 31, 1976.

(6) The period beginning on January 1, 1977, and ending September 30, 1977.

(7) The one-year periods beginning on October 1 of 1977, 1978, and 1979.

(c) DISTRICT OF COLUMBIA.—For purposes of this title, the District of Columbia shall be treated both—

(1) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Mayor of the District of Columbia), and

(2) as a country area which has no units of local government (other than itself) within its geographic area.

SEC. 142. REGULATIONS.

(a) GENERAL RULE.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this title.

(b) ADMINISTRATIVE PROCEDURE ACT TO APPLY.—The rulemaking provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to the regulations prescribed under this title for entitlement periods beginning on or after January 1, 1973.

SEC. 143. JUDICIAL REVIEW.

(a) PETITIONS FOR REVIEW.—Any State which receives a notice of reduction in entitlement under section 107(b), and any State or unit of local government which receives a notice of withholding of payments under section [104(b) or] 123(b), may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) RECORD.—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) JURISDICTION OF COURT.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) REVIEW BY SUPREME COURT.—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

SEC. 144. AUTHORITY TO REQUIRE INFORMATION ON INCOME TAX RETURNS.

(a) GENERAL RULE.—

(1) INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.—Subpart B of part II of subchapter A of chapter 61 of the Internal

Revenue Code of 1954 (relating to income tax returns) is amended by adding at the end thereof the following new section:

"SEC. 6017A. PLACE OF RESIDENCE.

"In the case of an individual, the information required on any return with respect to the taxes imposed by chapter 1 for any period shall include information as to the State, county, municipality, and any other unit of local government in which the taxpayer (and any other individual with respect to whom an exemption is claimed on such return) resided on one or more dates (determined in the manner provided by regulations prescribed by the Secretary or his delegate) during such period."

(2) Clerical amendment.—The table of sections for such subpart B is amended by adding at the end thereof the following:

"Sec. 6017A. Place of residence."

(b) Civil Penalty.—

(1) In general.—Subchapter B of chapter 68 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 6687. FAILURE TO SUPPLY INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.

"(a) Civil Penalty.—If any person fails to include on his return any information required under section 6017A with respect to his place of residence he shall pay a penalty of $5 for each such failure, unless it is shown that such failure is due to reasonable cause.

"(b) Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(2) Clerical amendment.—The table of sections for such subchapter B is amended by adding at the end thereof the following:

"Sec. 6687. Failure to supply information with respect to place of residence."

Subtitle D—Supplemental Fiscal Assistance

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Supplemental Fiscal Assistance Act of 1976".

SEC. 162. PAYMENTS TO STATE AND LOCAL GOVERNMENTS

Except as otherwise provided in this title, the Secretary shall, for each entitlement period beginning on or after January 1, 1977, pay out of the amounts authorized under section 105(c)(1) which are not reserved for distribution under subtitle A, and out any additional amounts appropriated under section 163(b), to each eligible State government, and to each eligible unit of local government, an amount determined under section 164 for such period. Such payments shall be made in installments, but not less often than once for each quarter, and shall be paid not later than 5 days after the close of each quarter.

Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

"SEC. 163. FUNDING.

"(a) ENTITLEMENT.—There shall be available for distribution under this subtitle, as an entitlement, any sums authorized under section 105(c)(1) which exceed—

"(1) $4,875,000,000 for the entitlement period beginning January 1, 1977, and ending September 30, 1977; or

"(2) $6,500,000,000 for any entitlement period of 12 months duration thereafter.

"(b) AUTHORIZATION.—In addition to the sums available under subsection (a) there are authorized to be appropriated such sums as Congress may deem necessary to adequately fund the program established by this subtitle.

SEC. 164. ELIGIBILITY; DETERMINATION OF AMOUNT OF PAYMENTS.

(a) ELIGIBILITY.—No State government shall be eligible to receive payments under this subtitle unless, with respect to an entitlement period, its entitlement under section 167 exceeds its entitlement under section 107. No unit of local government shall be eligible to receive payments under this subtitle unless, with respect to an entitlement period, its entitlement under section 168 exceeds its entitlement under section 108.

(b) PAYMENT OF EXCESS.—Except as provided in subsection (c) the Secretary shall pay—

(1) to each State government eligible under subsection (a), an amount equal to the amount by which its entitlement under section 167 exceeds its entitlement under section 107; and

(2) to each unit of local government eligible under subsection (a), an amount equal to the amount by which its entitlement under section 168 exceeds its entitlement under section 108.

(c) LIMITATIONS.—

(1) RATABLE REDUCTIONS.—If the sums available under section 163 (a) and (b) for any entitlement period for making payments under this subtitle to State governments and units of local government are not sufficient to pay in full the total amount of payments authorized by subsection (b) of this section for that entitlement period, then each such payment for such period shall be ratably reduced. In case additional funds become available for making such payments for any entitlement period during which the preceding sentence is applicable, such reduced payments shall be increased on the same basis as they were reduced

(2) PAYMENT LESS THAN $2,500, OR GOVERNING BODY WAIVES PAYMENT.—If (but for this subparagraph) the payments to any unit of local government below the level of the county government—

(i) would be less than $2,500 for any entitlement period ($1,875 for an entitlement period of 9 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such payment for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the payment for such period to the county government of the county area in which such unit is located.

SEC. 165. MANAGEMENT OF FUNDS.

(a) MANAGEMENT.—

(1) IN GENERAL.—Funds appropriated pursuant to section 163(b) shall remain available without fiscal year limitation and, except as provided in this title, may be used only for the payments to State and local governments as provided by this subtitle.

(2) REPORT.—The Secretary of the Treasury shall report to the Congress not later than January 15 of each year on the operations and payments under this subtitle during the preceding fiscal year.

(b) TRANSFER TO GENERAL FUND.—The Secretary shall from time to time transfer to the general fund of the Treasury any moneys available for this subtitle which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 166. COMPUTATION OF ALLOCATION AMONG STATES.

An amount equal to the amount authorized under section 105(c)(1) for each entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States as follows:

(a) ALLOCATION ON BASIS OF INCOME FACTOR.—Forty percent of an amount equal to the amount authorized under section 105(c)(1) for any entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States in the same proportion as—

(1) the population of each State, multiplied by the income factor of that State, bears to

(2) the sum of the products determined under subparagraph (1) for all States.

(b) ALLOCATION ON BASIS OF TAX EFFORT FACTOR.—Sixty percent of an amount equal to the amount authorized under section 105(c)(1) for any entitlement period which is not reserved for distribution under this subtitle shall be allocated among the States in the same proportion as the amount allocable to each State under subsection (c) of this section bears to the sum of the amounts allocable to all States under subsection (c) of this section.

(c) DETERMINATION OF ALLOCABLE AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (b) of this section, the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the amount allocable to it under paragraph (2).

(2) GENERAL TAX EFFORT AMOUNT.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to the total amount allocable under subsection (b) as—

(A) the population of that State, multiplied by the general tax effort factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) Income tax effort amount.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to the total amount allocable under subsection (b) as—

(A) the population of that State, multiplied by the income tax effort factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

SEC. 167. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) Division Between State and Local Governments.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 168.

(b) State Must Maintain Transfers to Local Governments.—

(1) General rule.—The entitlement of any State government for any entitlement period beginning on or after January 1, 1977, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, 1975, or until data on such period are available, the most recent such one-year period for which data on such amounts are available.

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) Adjustment where State assumes responsibility for category of expenditures.—If the State government establishes to the satisfaction of the Secretary that since December 31, 1976, it has assumed responsibility for a category of expenditures which (before January 1, 1977) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period utilized for purposes of paragraph (1)(B) it transferred to units of local government.

(3) Adjustment where new taxing powers are conferred upon local governments.—If a State establishes to the satisfaction of the Secretary that since January 1, 1977, one or more units of local government within such State have had conferred upon them new

taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be three-fourths of the amounts which (but for this paragraph) would be taken into account.

(5) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this title an amount equal to such reduction.

(6) TRANSFERS TO LOCAL GOVERNMENTS.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be made available for distribution to local governments within the State in accordance with section 168. In the event that, because of limits imposed by section 168, any portion of such amount is not properly allocable to local governments, such portion shall be transferred to the general fund of the Treasury.

SEC. 168. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the tax effort factor of that county area, multiplied by the income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.—

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the tax effort factor of that local government, multiplied by the income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then such township governments shall be treated as units of local government in making the allocation prescribed by paragraph (2) of this subsection.

(4) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a State there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions then before applying subsection (a) of this section there shall be allocated to each such tribe or village a portion of the amount allocated to that State for the entitlement period which bears the same ratio to such amount as the population of such tribe or village within that State bears to the population of that State. If this paragraph applies with respect to any State for any entitlement period, the total amount to be allocated to county areas under subsection (a) shall be appropriately reduced to reflect the amount allocated under the preceding sentence, and the population of any tribe or village receiving such allocation shall not be counted in determining the allocation under subsection (a) of the county area in which such tribe or village is located. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) RULE FOR SMALL UNITS OF GOVERNMENT.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraph (2) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to

be allocated under paragraph (2) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) *ENTITLEMENT.—*

(*A*) *IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection.*

(*B*) *MAXIMUM PER CAPITA ENTITLEMENT.—The per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be more than 300 percent of two-thirds of the amount allocated to the State under section 166, divided by the population of that State.*

(*C*) *LIMITATION.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).*

(*D*) *ENTITLEMENT LESS THAN $2,500, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—*

(*i*) *would be less than $2,500 for any entitlement period ($1,875 for an entitlement period of 9 months), or*

(*ii*) *is waived for any entitlement period by the governing body of such unit,*

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) *ADJUSTMENT OF ENTITLEMENT.—*

(*A*) *IN GENERAL.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.*

(*B*) *ADJUSTMENT FOR APPLICATION OF MAXIMUM PER CAPITA ENTITLEMENT.—The secretary shall adjust the allocation made under this section to county areas or to units of local governments in any State in order to bring those allocations in compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.*

(C) Adjustment for application of limitation.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

SEC. 169. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) In General.—For the purposes of this subtitle—

(1) Population.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) Exempt income.—Exempt income shall mean one-fourth of the annual income designated by the Bureau of the Census as the low income level for a family of four persons.

(3) Aggregate exempt income.—Aggregate exempt income for any unit of government shall mean the population of that unit multiplied by exempt income as defined in paragraph (2).

(4) Income.—Income means total money income from all sources, as determined by the Bureau of the Census, for general statistical purposes.

(5) Dates for determining allocations and entitlements.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) Intergovernmental transfers.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) Data used; uniformity of data.—

(A) General rule.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) Use of estimates, etc.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he shall use such additional data

(including data based on estimates) as may be provided for in regulations.

(*b*) *Income Factor.—*

(*1*) *The income factor for a State, county area, or unit of local government is a fraction—*

(*A*) *the numerator of which is—*

(*i*) *the number of persons in families in that State, county area, or unit of local government below the low-income level, plus the number of unrelated individuals 65 years old or over below the low-income level, plus*

(*ii*) *the number of persons in families with incomes between 100 percent and 125 percent of the low-income level residing in a central city of an urbanized area within that State, county area, or unit of local government, plus the number of unrelated individuals 65 years old or over who have incomes between 100 percent and 125 percent of the low-income level residing in a central city of an urbanized area within that State, county area, or unit of local government; and*

(*B*) *the denominator of which is the number of persons in families in that State, county area, or unit of local government plus the number of unrelated individuals 65 years old and over.*

(*2*) *The terms used in paragraph* (*1*) *are defined in accordance with the definitions used by the Bureau of the Census for general statistical purposes.*

(*c*) *General Tax Effort Factor of States.—*

(*1*) *In general.—For purposes of this title, the general tax effort factor of any State for any period is—*

(*A*) *the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by*

(*B*) *the aggregate income, as defined in paragraph* (*4*) *of subsection* (*a*), *attributed to such State for the same period, minus the aggregate exempt income attributable to such State for the same period.*

(*2*) *State and local taxes.—*

(*A*) *Taxes taken into account.—The State and local taxes taken into account under paragraph* (*1*) *are the compulsory contributions exacted by the State* (*or by any unit of local government or other political subdivision of the State*) *for public purposes* (*other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay*), *as such contributions are determined by the Bureau of the Census for general statistical purposes.*

(*B*) *Most recent reporting year.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.*

(d) INCOME TAX COLLECTIONS OF STATES.—The income tax collections attributed to any State for any entitlement period shall be equal to the net amount collected from the State individual income tax of such State during the last calendar year ending before the beginning of such entitlement period. The individual income tax of any State is the tax imposed upon the income of individuals by that State and described as a State income tax under section 164(a)(3) of title 26, United States Code.

(e) INCOME TAX EFFORT FACTOR.—The income tax effort factor of any State for any entitlement period is—

(1) the income tax collections of that State as defined in subsection (d), divided by

(2) the aggregate income, as defined in paragraph (4) of subsection (a) attributed to such State for the same period, minus the aggregate exempt income attributable to such State for the same period.

(f) TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this title, the tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the adjusted taxes of each other unit of local government within that county area, divided by

(2) the greater of

(A) the aggregate income (as defined in paragraph (4) of subsection (a)) attributed to that county area, minus the aggregate exempt income attributable to that county area, or

(B) one-half the aggregate exempt income attributable to such county area for the same period.

(g) TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this title—

*(1) IN GENERAL.—The tax effort factor of any unit of local gov*ernment for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the greater of—

(i) the aggregate income (as defined in paragraph (4) of subsection (a)) attributed to that unit of local government, minus the aggregate exempt income attributable to that unit of local government, or

(ii) one-half the aggregate exempt income attributable to such unit of local government for the same period.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that por-

tion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

DISSENTING VIEWS OF HON. JACK BROOKS CONCURRED IN BY HON. JOHN MOSS

In exercising its new jurisdiction over this important legislation for the first time, the Committee on Government Operations has, I believe, fulfilled its obligation to the House in a highly responsible manner. The committee has had the benefit of a wide variety of information, practical experience, expert opinion and scholarly research in making its recommendation for the continuation of the State and Local Fiscal Assistance Act. In some respects H.R. 13367 is an improvement over the current program. But my disagreement with the fundamental concept of revenue sharing is so basic, I am unable to support it.

My opposition is based mainly on a deep concern over the effect revenue sharing is having on our representative system of government. I am also disturbed by its impact on federal spending and borrowing. And I am dismayed and disheartened by the willingness of its supporters to overlook even its most glaring defects in their eagerness to perpetuate this pernicious program.

ADVERSE EFFECT ON SYSTEM

Until the enactment of the State and Local Fiscal Assistance Act in 1972 the principle that those who spend the taxpayers' money should have the responsibility of raising it was so firmly established as to be virtually unquestioned. It is, after all, merely an extension of the rallying cry, "No taxation without representation!" that played so large a part in establishing the 200 years of independence we are now celebrating.

It is the representatives of the people who vote to levy the city, state, and federal taxes people must pay. Until now, they have been accountable for spending only the revenue they have raised. But the $6.65 billion handed out each year to state and local units of government through revenue sharing is spent by officials who have no responsibility for collecting it. Such a division of responsibility strikes a heavy blow at our form of government.

Revenue sharing also marks a fundamental departure from Congress' constitutionally assigned role of providing for "the general welfare of the United States" through its taxing power. That used to mean that money appropriated from the national Treasury was used in pursuit of national goals and policies. But Congress is now using its power of the purse to provide for the collection of garbage in one city, the payment of policemen in another, and the construction of a swimming pool in a third. If this were being done as part of a national attack on problems connected with waste management, law enforcement, or the development of recreational facilities it would be in keeping with Congress' responsibilities. But to be paying for them simply because officials in those cities have been given drawing rights on the U.S. Treasury through revenue sharing is a drastic distortion of our federal system.

But the gravest danger to our federal system I see in revenue sharing lies in the growing dependence of the cities on this aid. In the few short years the funds have been flowing, and at a time when they amount to only a small percentage of most cities' budgets, they have already become indispensable, if we can believe the local government officials who have been besieging the committee during its consideration of H.R. 13367. Even the slightest reduction in the funds, we were told, would cripple their ability to render vitally needed services.

One of the arguments used to encourage passage of revenue sharing in 1972 was that it would reverse the trend toward centralized government. If anyone still believes that, a reading of H.R. 13367 should be a sobering experience. It is an inescapable fact in government that he who pays the piper calls the tune. And sooner or later 38,000 local units of government—90 percent of which never had a direct link with Washington before revenue sharing—will suddenly learn to their dismay that those revenue sharing funds were not "free" after all.

As one who believes strongly in the need for local government to be as strong and independent as possible, I can only watch in sorrow and wonderment as officials of these communities struggle and strain to tug this Trojan Horse inside their city gates.

FISCAL IMPACT

Revenue sharing is one of those programs that has benefited immensely from its name. The idea of the federal government sharing its riches with the states and cities is very appealing. It might even be logical in prosperous times. But when the federal government is running a $74 billion deficit in one year and there is no prospect of it turning a surplus in the foreseeable future, it is proper to ask, what revenue is there to share?

The fact is the federal government is borrowing approximately 20 percent of what it is spending this year. When revenue sharing was enacted it was argued that the federal government's more efficient tax collecting machinery made the program desirable. But what the recipients of revenue sharing were really counting on was the federal government's borrowing capacity. Many states and most cities have constitutions or charters that prevent them from going into debt. Not so the federal government. The national debt now stands at something over $600 billion, and every quarterly allocation of revenue sharing money adds to it.

It is true that other government programs in these times are also financed in part by borrowed funds. But it is also true that Congress has a chance to examine these programs, weigh them against each other and against the limited resources available, and decide how much to allot to each one. But this basic exercise of its authority is denied to Congress when it comes to revenue sharing. The 1972 act committed Congress to an outlay of $30 billion over five years and H.R. 13367 would continue that open door policy at the Treasury until October, 1980. For Congress to lock up its largest domestic spending program at a time when the cost of government is causing serious and widespread concern is not only unjustified, but incomprehensible. An amendment to H.R. 13367 to bring revenue sharing into the regular appropriation process will have my vigorous support.

Measured against the promises and expectations of 1972, revenue sharing has come up short in many respects. It has not increased citizen involvement in local affairs. It has not strengthened or revitalized local government or made it more responsive. It has not improved conditions in the cities. To a great extent, the money has simply disappeared without a trace.

Instead of pouring out $6.65 billion indiscriminately to every state and local jurisdiction we should be using our severely limited funds to attack specific urban problems. That is the proper role for Congress.

JACK BROOKS.
JOHN E. MOSS.

SUPPLEMENTAL VIEWS OF HON. DANTE B. FASCELL

I support the bill approved by the committee and urge its adoption by the House.

The bill includes several important reform provisions intended to help redress a number of defects found during the first years of operation of the general revenue sharing program. The inclusion of these reforms—in such areas as greater equity in the distribution of funds, increased opportunities for citizen participation in the budgeting of funds at the State and local levels, and strengthened protection of civil rights in the use of funds—is welcomed by those who have been working to correct the program's flaws.

At the same time, the bill does not resolve all of the problems inherent in the general revenue sharing program to date. These areas should receive further attention as the bill proceeds through the legislative process.

I am concerned about the committee's decisions on the duration of the program and the type of funding. The bill provides for an entitlement over the next 3¾ years at an annual rate of $6.65 billion. This is considerably less than the 5¾-year extension sought by the Administration, but it still does not satisfy those who feel that the program should be subject to the annual appropriation review of Congress.

A better approach would be to combine both concepts. The bill should provide for 3¾ years of authorization and appropriation, with annual reviews thereafter. The reviews should be conducted on a three-year forward basis, however, so that each jurisdiction would know what it would be getting each year, long enough in advance to plan intelligently for the wisest use of funds. Under such a system, $6.65 billion could be authorized and appropriated by the bill for each year through Fiscal Year 1979, and starting in January, 1977, Congress would begin the consideration of authorization and appropriation for Fiscal Year 1980.

Such a system would bring the program back under the normal legislative process and enable the authorization, appropriation, and budgeting committees to work their will. The next Congress could decide to abandon the program after September 30, 1979, expand it, or maintain it at the same level.

This approach is embodied in H.R. 10319, a bill which I introduced on October 22, 1975, to implement reforms sought by a number of public interest organizations based on extensive studies of the program. Although this provision is not included in the committee bill, it does contain major elements of other reforms sought by my legislation.

The committee bill's strong and specific provisions for citizen participation will go far toward eliminating ills in the use of funds at the local level. The expanded anti-discrimination section will provide new assurance that the rights of minorities, women, the handicapped and the elderly will be protected. The bill also contains a start toward the modernization of State and local governments, through the inclusion of a statement of policy on behalf of consolidations and other steps that could increase the economy and efficiency of State and local governments.

An important change is the formula revision which is a compromise between the existing mechanism and the principles set forth in H.R. 10319. The committee bill provides for the distribution of $6.5 billion under the existing formula, which uses per capita income data as a measure of need. The remaining $150 million would be distributed under a revised formula using the percentage of the population below the poverty level in each jurisdiction as the measure of need.

The effect of the formula revision is to assure that each jurisdiction will be "held harmless" to the amount it would receive by continued use of the existing formula at an annual rate of $6.5 billion (the actual funding level during calendar 1976). Thus, no city or State will lose funds because of the formula change.

During the committee's discussion, those who favored a simple extension of the existing formula pointed out that under the revision some jurisdictions would "lose" funds they would otherwise receive under the old formula at a $6.65 billion spending level. It is important to note, however, that such a "loss" is only theoretical, since the revenue sharing program has never been funded at $6.65 billion for a full year. The $6.65 billion figure represents an annualization of the funding level of the last six months of calendar 1976. Since jurisdictions have never actually received such a sum, they could not "lose" it under the formula change. A more accurate comparison would be between the $6.5 billion actually received in 1976 and the $6.65 billion to be received during 1977 and future years under the committee bill. This would show all jurisdictions unharmed by the change, and many jurisdictions gaining.

The $150 million to be distributed under the revised formula would be shared by jurisdictions which gain through use of the poverty standard. Studies have shown that poverty data is a more accurate reflection of need than per capita income, since many jurisdictions with relatively high per capita income levels actually have high needs for services as well. The formula change would help city and poor rural areas with high proportions of poverty.

While the provisions of H.R. 13367 as revised by the committee make important improvements in the program, I feel that Congress should maintain close oversight in the future so that any further reforms can be adopted as needed. Hopefully, the committee bill will lay the groundwork for continuation of the general revenue sharing program in a manner that will meet the best interests of all Americans.

DANTE B. FASCELL.

SUPPLEMENTAL VIEWS OF HON. BENJAMIN S. ROSENTHAL

One common refrain heard throughout the committee's consideration of this bill was the need to reenact the general revenue sharing bill with virtually no changes. I feel this is a sad commentary on the legislative process. Surely, after five years of experience in the distribution of over $30 billion to state and local governments, there are numerous refinements and improvements which could be made in this program.

Fortunately, the bill does incorporate several valuable changes. One is an amendment I introduced to encourage states to take steps to modernize and revitalize state and local government structures and procedures. This is discussed below.

But various other thoughtful and beneficial proposals fell victim to the "hands-off" pressures. I intend to offer one of the most important of these on the floor. It addresses a major problem posed by the figures used in the allocation formula—the systematic undercounting of certain state residents. The amendment failed in committee on a 17–21 vote.

Population Undercount and Illegal Aliens

The Bureau of the Census estimates that 2.5% of the nation's citizens (approximately 5 million Americans) and virtually all of the country's illegal aliens (as many as 8 million persons) were missed in the last census. The Bureau is in the midst of studies which hopefully will permit a state-by-state breakdown of this population. This amendment simply says that if these studies result in reliable figures, the number should be included in each state's population.

Citizens missed by the census tend to be those who make great use of government services—the needy and uneducated. Illegal aliens also cause a great drain on government finances—estimated at $18 billion a year in added payments and lost taxes. Local communities shoulder these burdens through no fault of their own. It is only fair that all local residents be counted.

This amendment would not condone the presence of illegal aliens. Nor would it alter the revenue sharing formula. It merely seeks to improve the accuracy of the population figures used in the formula. I hope the full House will recognize the urgency of this improvement.

State and Local Government Modernization

I am pleased that the committee did adopt an amendment I introduced to encourage the modernization of state and local governmental structures.

Revenue sharing is the single largest domestic program of our federal government. It pours substantial sums of money into state and local governments. But it does so without regard to their effectiveness or efficiency. In too many instances, we are pouring money into rusted or misshappen vehicles, and we know that there is considerable leakage.

This section of the bill is a modest step towards correcting this situation. It sets as a goal the preparation by states of a plan for modernizing and revitalizing state and local government. It requires each state to submit to the Secretary of the Treasury a report annually on the state's progress in achieving governmental reform and modernization, and it establishes a procedure for each state's modernization plan to be developed and implemented. It also sets a broad series of noncontroversial and nonexclusive criteria as to what is meant by modernization. There is no penalty connected with a state's failure to develop and pursue a modernization policy other than a reporting of that fact by the Treasury Secretary to the Congress in an annual report on all states' revitalization efforts.

Hopes were strong in 1972 that revenue sharing, as unrestricted aid, might induce states to restructure and modernize their governments. There was little disagreement then or now over the need for such modernization. Unfortunately, these hopes have not been realized. The evidence shows virtually no effort on the part of states, as a consequence of revenue sharing, to overhaul obsolete government structures, strengthen management capacity or alter time-encrusted ways of delivering services.

Indeed general revenue sharing, according to a comprehensive League of Women Voters report, has had the opposite effect. By encouraging each local jurisdiction to "go it alone", giving each government its own allocation of funds, revenue sharing has encouraged the fragmentation of political responsibilities and can be viewed as a throwback to earlier days of exclusionary home rule.

Studies by the GAO, Brookings Institute and League of Women Voters could uncover no significant examples of revenue sharing funds inspiring improved delivery of services or collection of revenues across local government lines. Indeed the evidence is to the contrary. In Rochester, New York, for example, general revenue sharing payments reportedly halted a movement to disincorporate several villages which were burdened by excessive taxes; revenue sharing funds also furthered delays in carrying out a city-county plan to unify police services in the same metropolitan area.

This section of the bill is the opportunity to correct one of the greatest failings of the revenue sharing program. In enacting grant-in-aid programs in the 1950's and 60's, the Congress recognized that the fragmentation of governments posed a threat to the effective delivery of services. Several laws then passed required region-wide sharing and planning, and encouraged the establishment of regional planning bodies. This section of the bill continues the momentum started then and so urgently needed now in a time of increasing local budget stress. While it requires states only to report upon their modernization efforts, and imposes no sanctions against any recalcitrant states, it is an essential ingredient of the revenue sharing program.

BENJAMIN S. ROSENTHAL.

SUPPLEMENTAL VIEWS OF HON. JOHN CONYERS, JR.

One of the purposes—indeed, the principal justification—of General Revenue Sharing was to bring government closer to the people. This program was heralded in 1972 before Congress and the American people as the beginning of "a new American revolution—a peaceful revolution in which power [is] turned back to the people." The record unambiguously shows, however, that far from being a vehicle for the redistribution of power, General Revenue Sharing has amplified even further the entrenched power of local majorities. Five years and more than $30 billion later, the political question, that goes to the heart of this program—namely, which people is this mammoth Federal transfer bringing government closer to—has been answered in a way that is totally unsatisfactory to me.

Every political jurisdiction evidences divisions between majorities and minorities, and the smaller, more homogeneous a jurisdiction is, the more likely will the majority trample on the rights of the minority. Member of the majority group enjoy the readiest access to decision-makers, get the first crack at public funds, and are the first called to fill newly-created jobs. A significant portion of the 39,000 local jurisdictions that receive revenue sharing funds are small, and their past use of these funds has not contradicted the experience which drove the Founders of this country to institute a Bill of Rights to be enforced by the Federal Government to check the tyranny of local majorities.

The United States Civil Rights Commission, the National Urban League, and other organizations which have investigated the operation of the General Revenue Sharing have documented thousands upon thousands of cases in which local governments have used revenue sharing funds in ways that discriminate against politically vulnerable groups. Employment discrimination has been the most prevalent form. There has been little or no enforcement of the non-discrimination provisions in the original Act in the areas of the hiring of workers, the payment of wages, and in the management of apprenticeship programs.

Local majorities have been rewarded with the lion's share of revenue sharing in yet another way. Only two percent of revenue sharing funds in 1975 went directly to programs for the poor and the aged. With the help of revenue sharing many local governments were able to prevent tax increases or even to reduce tax burdens. (Ten states do not even have income taxes.) Rather than expanding municipal services to the poor, these funds too often have subsidized middle-class taxpayers. Because there is virtually no way to trace how funds are spent, local governments labor under few constraints that might prevent them from catering only to dominant local interests.

Finally, General Revenue Sharing's formula for allocating funds nation-wide, by not taking into account fully in its measurement of public need citizens who have incomes below the poverty level and by placing a ceiling on the amount of funds which big cities are eligible for, has discriminated against jurisdictions which are most in need of Federal assistance. The interests of big cities continue to be sacrificed while far less responsive governmental units are rewarded.

At some point in the not too distant future the Congress will have to examine much more seriously than it has up to now the long-range implications of programs such as General Revenue Sharing, which give local governments such considerable discretion and which require so little Federal oversight. Federal spending for social programs is being terribly squeezed; the current Budget Resolution provides no real growth in most existing social programs and, given the incredible increase in the Pentagon's budget authority, and the unchecked growth in tax subsidies, we will be locked into an ever-diminishing amount of Federal Revenue available to address the urgent social needs in the country. The very authority of the Federal Government to safeguard the national welfare and to perform the leading role in promoting constructive social and economic change is under severe attack. Given this situation, it is of paramount importance that the Federal Government not shirk its very considerable responsibility not only in seeing that social spending is adequate to meet the needs of people, but that the process whereby funds are distributed and used is an equitable one.

I propose as a way to examine the long-term implications of General Revenue Sharing, and the overall context of trends in social spending, that a national commission be established to investigate the distribution of functions and responsibilities of all levels of government, to examine alternative grant-in-aid programs as well as ways to overhaul Federal, State, and local systems of taxation, and to recommend much-needed reforms.

I voted to continue General Revenue Sharing with great reservations. To turn the Federal spigot off without having a workable alternative would do incalculable damage to our cities. As cities totter dangerously on the brink of insolvency, Federal support must be continued until a way is found to improve upon revenue sharing. The strong civil rights and citizen participation sections in the new revenue sharing bill reported by the Government Operations Committee, hopefully, will restore the necessary Federal role in overseeing the program.

JOHN CONYERS.

SUPPLEMENTAL VIEWS OF HON. JOHN L. BURTON

I do not believe that gifts of federal funds to local governments in the form of General Revenue Sharing is the best means of helping local governments with their fiscal problems.

The separation of taxing responsibility from spending authority is poor fiscal policy.

I believe that local governments would be best served if the federal government would assume the total costs of the various federal, state and local welfare programs. Increased federal assistance to local school districts would also be helpful. Such steps by the federal government would free up local revenues to finance other duties of local government, without the need for the general revenue sharing funds.

While I have some questions and concerns about the present revenue sharing program, I can support the bill as passed by the Committee because of the expanded and strengthened citizen participation and civil rights guarantees included. I am not in love with the entitlement approach to funding this program. As part of the overall bill reported by the Committee, however, I can support it.

JOHN L. BURTON.

SUPPLEMENTAL VIEWS OF HON. ROBERT F. DRINAN

When the Intergovernmental Relations and Human Relations Subcommittee began hearings on legislation to extend the State and Fiscal Assistance Act of 1972 last September, I asserted the need for substantial improvements in the areas of accountability, equitability, citizen participation, and civil rights enforcement if the revenue sharing program were to be extended. The enormous volume of testimony and data received by the Subcommittee confirmed the existence of significant flaws in the operation of the program and established the necessity for a legislative remedy. Throughout its deliberations on this issue, the Committee has been subjected to intense pressure by lobbyists representing state and local officials to ignore these obvious deficiencies and extend the general revenue sharing program without change.

I am pleased that the Committee has successfully withstood that challenge and reported out a good bill which extends revenue sharing at its current funding level for 3 and ¾ years while reducing or eliminating some of the most serious shortcomings of the existing Act. H.R. 13367, which was approved by an overwhelming vote of 39 to 3, does not tamper with the fundamental premises of revenue sharing. Indeed, by eliminating mandatory expenditure categories and other cosmetic restrictions on the use of funds, the bill recognizes the fact that revenue sharing is, in reality, a direct operating subsidy for state and local governments, rather than a distinctive fund earmarked and utilized for specific purposes.

The Committee retained the complex formula through which more than 39,000 jurisdictions receive funds four times each year and preserved the freedom exercised by those recipients in spending revenue sharing dollars. At the same time, the Committee took steps to ensure that all citizens would benefit from the revenue sharing program and that local officials would be held accountable to their constituents and to Congress for the expenditure of revenue sharing funds.

EQUITABILITY OF ALLOCATION

The Committee struggled repeatedly with the question of whether the allocation formula arrived at somewhat arbitrarily 4 years ago was the most equitable means of distributing revenue sharing funds. While all agreed that the formula is imperfect, no one could suggest an alternative which was clearly more equitable. Moreover, any formula alteration which increased the entitlements of some recipients would necessarily reduce the entitlements of others. For that reason, the Committee was reluctant to adopt major formula changes.

It is significant and rather disconcerting that once an allocation formula in a program of this magnitude is adopted there is tremendous resistance to alter it, even in the face of overwhelming evidence. For example, the General Accounting Office issued a report on April 22, 1976 which sharply criticized the 20 percent per capita allocation floor which automatically increases the entitlements of some 10,000 jurisdictions at the expense of more deserving recipients. The unfairness and counterproductivity of the 20 percent floor was corroborated by studies conducted by the Brookings Institute and the National Science Foundation. No rationale or justification for this formula provision was ever offered, yet the Committee voted to retain the floor without change.

The Committee also failed to address the problem of population undercounting as it applies to the computation of revenue sharing entitlements. Millions of American citizens and illegal aliens, not included in the 1970 census, are receiving public services provided by state and local governments but are not taken into account when revenue sharing entitlements are computed. As a result, communities containing a large proportion of undercounted individuals receive less revenue sharing funds on a per capita basis than they are entitled to. The Committee narrowly defeated an amendment to revise population figures to the extent possible in order to incorporate those not counted in the last census in the distribution of revenue sharing funds. I hope that both of these formula issues will be considered on the floor.

The Committee did make several formula changes which should ultimately increase the fairness of the program. First, it adopted a new eligibility requirement designed to eliminate from the program those jurisdictions which refer to themselves as "general purpose governments" while actually performing only one public service. These nonfunctional or single purpose units have been receiving a windfall under the current Act at the expense of the legitimate general purpose governments in the same area. The Committee bill will ensure that the actual functions of a government, rather than its designation, will determine eligibility for revenue sharing funds.

A second change approved by the Committee establishes an alternative allocation formula to be used to distribute funds authorized by Congress for inclusion in a supplemental pot of revenue sharing funds. This substitute formula emphasizes tax effort to a greater extent than the present formula and replaces per capita income with percent of population below the poverty line as an indicator of fiscal capacity. It is not clear whether this second formula will prove more equitable or even as workable as the first. Indeed, the Committeee did not specifically authorize any funding for this separate title of the bill. Yet, by establishing an alternative formula, the Committee served notice that it is not willing to accept the present distribuion of funds as unalterable and that it will continue to seek a solution which best responds to the needs of all state and local governments.

CITIZEN PARTICIPATION

Effective citizen involvement in the decision-making process is fundamental to the revenue sharing concept. While elected officials must ultimately decide how revenue sharing funds are to be spent, all citizens should be able to offer their suggestions and to advise their governments concerning the programs they think should be funded in whole or in part out of revenue sharing. Faced with a record indicating that citizen participation in the expenditure of revenue sharing funds has been virtually nil to date, the Committee adopted a series of important provisions to ensure more effective public input.

First, the Committee added a requirement that recipient governments hold a public hearing on the proposed expenditure of revenue sharing funds prior to submitting a Proposed Use Report to the Office of Revenue Sharing. Under the current Act, local officials need not consult with or even inform citizens about the availability of revenue sharing funds before reporting how they intend to use the money. The addition of this new hearing provision will have the effect of enabling citizens to get involved in the issues about the expenditure of revenue sharing funds at a sufficiently early stage in the decision-making process to exert a meaningful impact.

The Committee also added a requirement that recipients hold public hearings prior to the adoption of their budget to consider the proposed use of revenue sharing funds within the context of their overall spending plan. This requirement would be waived in the case of recipients which already hold such a hearing. The most significant aspect of this pre-budget hearing is that citizens, for the first time, will be told how revenue sharing funds fit into the overall budget and, consequently, what the actual fiscal input of the revenue sharing dollars will be.

While these new hearing provisions are important, it is clear that the convening of a public hearing does not necessarily mean that effective citizen participation has been achieved. Particularly in the case of large municipal and state governments, which operate on complex multi-million dollar budgets, the ordinary citizen lacks the knowledge, the time, and the expertise to offer substantial input. In these jurisdictions, public hearings are insufficient to ensure effective public participation. A special vehicle, such as a Citizens Advisory Committee appointed by the Chief Executive Officer and representing the various facets of the community, is needed. Such citizens' groups have been mandated by law in a number of federal programs, including Model Cities and the Communities and Housing Development Act of 1975. Advisory Committees are most necessary in a program such as revenue sharing where local discretion in the expenditure of Federal funds is virtually absolute. I hope that a provision requiring the establishment of Citizen Advisory Committees in the 50 states and the 540 other jurisdictions receiving $1 million or more each year in revenue sharing funds can be added to H.R. 13367 on the floor.

ACCOUNTABILITY

Having eliminated the priority expenditure categories and other restrictions on the use of revenue sharing funds, the Committee acted to strengthen reporting requirements and auditing standards in order to increase the accountability of recipient governments in the expenditure of the federal dollars. The GAO testified that existing reports on the use of revenue sharing funds were meaningless. The problem was that by substituting revenue sharing dollars for other local revenues in certain budgetary areas, local governments could effectively conceal the actual fiscal inpact of the revenue sharing funds.

The Committee followed the recommendations of the GAO in meeting this problem by increasing the specificity of reports on the proposed and actual use of revenue sharing funds and by requiring such reports to relate the expenditure of revenue sharing funds to the entire local budget. Moreover, the Committee stipulated that Actual Use Reports shall provide an explanation of all differences between the actual use of funds received and the proposed use of such funds as reported to the Secretary. Under the existing Act, there need be no relationship whatsoever between how a recipient says it tends to use revenue sharing funds and how it does in fact expend the funds.

In the area of auditing standards, the Committee expanded upon the current requirement that recipients conduct annual audits in accordance with their local laws and auditing practices. The Committee added the key requirement that such audits be conducted independently and that audit reports on the expenditure of all public funds be made available to the public. The Comptroller General was authorized to evaluate compliance with the new auditing provision. If the regulations to be promulgated by the Secretary of the Treasury to carry out this section accurately reflect the will of the Committee, local governments will be required to meet a new standard of responsibility and accountability for their expenditure of funds.

The Committee also provided for an annual comprehensive report by the Secretary of the Treasury to Congress on all aspects of the program including the extent of citizen participation, compliance with civil rights provisions, the implementation of auditing standards, and the net fiscal impact of revenue sharing funds. This report should greatly aid Congress in its oversight of the program and serve as an incentive to the Office of Revenue Sharing to enforce the provisions of the Act in a timely and forthright manner.

NONDISCRIMINATION

The provision adopted by the Committee in the area of Civil Rights enforcement is among the most important components of H.R. 13367. The Committee's hearing record was replete with evidence that the Act's nondiscrimination requirement had gone virtually unenforced since the enactment of the State and Local Fiscal Assistance Act of 1972. Oversight hearings on the civil rights aspects of revenue sharing held by the House Judiciary Subcommittee on Civil and Constitutional Rights confirmed the need for immediate and decisive action to halt the discriminatory use of revenue sharing funds. The recommendations of the Subcommittee were contained in a report issued in November, 1975. The Committee relied heavily upon the expertise of its sister subcommittee in Judiciary in addressing the civil rights issue and formulating the remedy contained in the Committee bill.

The nondiscrimination provision, explained in detail elsewhere in this report, is designed to provide for the effective enforcement of the prohibition on the discriminatory use of revenue sharing funds contained in the existing Act. By establishing a set of compliance procedures resulting in the mandatory suspension of revenue sharing payments should proven discrimination persist, the Committee has ensured that the laxity of the Office of Revenue Sharing in enforcing the nondiscrimination requirement of the Act shall not be permitted to continue. Local governments will no longer be able to evade civil rights enforcement through slick accounting devices in reporting the use of revenue sharing funds. Individuals submitting complaints alleging civil rights violations will no longer have to wait many months or even years before receiving a response from the Office of Revenue Sharing. Revenue sharing recipients will no longer be able to continue discriminatory practices without suffering the suspension of their revenue sharing funds. Instead, the federal government will take steps to enforce the law and protect the civil rights of all Americans.

I would have preferred a stronger nondiscrimination provision than that ultimately approved by the Committee. Specifically, I fear that the clause permitting recipients to avoid civil rights compliance proceedings by proving that revenue sharing dollars were not expended in the program in which the alleged discrimination occurred may prove to be a major loophole. As the GAO and other analysts have reported, it is virtually impossible to identify revenue sharing funds as such once they are commingled with other local revenues within an overall budget. If that fact is recognized by the Office of Revenue Sharing in administering this section, the exception clause will not have much impact. But, on the other hand, if the Administration relies upon the assurances of local governments and easily-manipulated accounting designations as adequate evidence that revenue sharing funds were not spent in a particular program, civil rights enforcement will continue to be ineffectual.

Second, the requirement that a recipient must be engaging in a "pattern or practice of discrimination" in order to be subject to enforcement proceedings sets a different standard for civil rights violations in this Act than that which appears elsewhere in Federal law. It is not clear, for example, how many acts or instances of discrimination against one or more individuals must be committed before a "pattern or practice" is said to exist. Should this language be retained on the floor, I am hopeful that courts will swiftly interpret the provision to provide the broadest possible protection to victims of discrimination.

Third, the Committee bill requires the Secretary of the Treasury to hold a preliminary hearing on alleged noncompliance in the area of civil rights at the request of a recipient government before taking any action to defer the payment of revenue sharing funds. Other civil rights provisions of federal law invariably allow an administrator to convene such a hearing at his discretion, without requiring that he do so. This provision will tend to delay effective enforcement of the prohibition against discrimination by allowing recipient governments to engage in time-consuming bureaucratic procedures.

Despite these deficiencies, the civil rights provision adopted by the Committee is an excellent one which remedies the major deficiencies which have paralyzed civil rights enforcement under the Act to date. Having participated in the oversight hearings of the Judiciary Subcommittee on Civil and Constitutional Rights as well as the hearings of the Subcommittee on Intergovernmental Relations and Human Resources, I feel that the adoption of a strong civil rights provision is an essential prerequisite to the complaints of the revenue sharing program. I am pleased that the Committee responded to the pressing need for change in this area by adopting a workable legislative plan for the effective protection of civil rights under the revenue sharing program.

FUNDING MECHANISM

The Committee spent a considerable amount of time debating alternative methods of funding the revenue sharing program. There was considerable opposition to the continuation of the present funding mechanism which both authorized and appropriated funds for the program for a five year period. Thus, unlike virtually all other Federal programs, revenue sharing is exempt from the annual appropriations process and from periodic review by the Budget Committee. Under this approach, which violates the ordinary rules of the House, revenue sharing is, in effect, uncontrolled spending. While the Department of Defense, the Office of Education, the National Cancer Institute and other essential agencies have to stand in line each year to compete with other priorities to secure appropriations, revenue sharing funds have continued to flow on a guaranteed, uncontrolled basis. Chairman George Mahon of the Appropriations Committee and Budget Committee Chairman Brock Adams urged annual review and appropriation; this would provide local governments with sufficient time to plan their expenditures without sacrificing congressional oversight and fiscal responsibility.

Regrettably, the Committee narrowly rejected the suggestion for annual forward funded appropriations and instead settled upon a third funding device—entitlements—as an alleged compromise between the two alternatives described above. While entitlement programs are explicitly authorized by the Budget Act, they are, in effect, combined authorization-appropriations which constitute uncontrollable spending. If entitlement funding is ever justifiable, it is only in those programs such as Social Security and veterans' benefits where the recipient has a vested right to the authorized funds. Such is not the case with revenue sharing. I hope that the House will reconsider this issue and settle upon a mechanism for funding the revenue sharing program which does not violate basic principles of accountability and fiscal responsibility.

GOVERNMENT REVITALIZATION

I was pleased that the Committee adopted a provision to encourage states to develop comprehensive plans to revitalize and modernize state and local government. The strengthening of local government through effective planning and regional cooperation, was one of the key objectives of a pioneering revenue sharing bill introduced by Congressman Henry Reuss and Senator Hubert Humphrey well before the enactment of the State and Local Fiscal Assistance Act of 1972. If revenue sharing can provide an impetus for local governments to become more efficient providers of public services, the program will have made an enduring contribution to our democratic system. The provision adopted by the Committee which emphasizes planning and communication rather than actual structural changes in government, is just a start in this direction. Yet it is an important addition to the bill which should be retained.

CONCLUSION

In the wake of the Committee's protracted deliberations on the proposed extension of the revenue sharing program, I continue to harbor doubts about whether this is really the best way to spend more than $6.5 billion each year to meet the needs of the American people. Perhaps the funds would be better spent in initiating a program of national health insurance or in federal assumption of state welfare costs or in increased aid to local education. Perhaps Americans would rather receive these dollars back directly, in the form of reduced federal taxes, instead of turning them over to state and local officials to spend as they see fit.

But it is apparent that state and local governments throughout the United States have become dependent upon the continuation of this source of revenue beyond the end of 1976. The abrupt termination of this program could lead some of our communities to the brink of fiscal disaster. The program has numerous flaws, but the committee has gone a long way toward supplying legislative remedies. I will continue to fight for necessary changes in the bill as described above. But, if the revenue sharing program is to be continued, I believe it should go forward substantially in the form provided for in H.R. 13367.

ROBERT F. DRINAN.

ADDITIONAL VIEWS OF HON. ROBERT F. DRINAN (CONCURRED IN BY HON. JOHN E. MOSS, HON. DANTE B. FASCELL, HON. WILLIAM S. MOORHEAD, HON. BENJAMIN S. ROSENTHAL, HON. JOHN CONYERS, JR., HON. BELLA S. ABZUG, HON. CARDISS COLLINS, AND HON. MICHAEL HARRINGTON)

At the mark-up session on H.R. 13367, the Committee adopted an amendment in the nature of a substitute to Section 10 of the bill. That amendment revised the non-discrimination provision (Section 122) of the State and Local Fiscal Assistance Act of 1972, and added new Sections 124 and 125 which expand the opportunities for citizens to protect their rights under the Act. During the debate over this amendment, a number of questions arose regarding the scope and meaning of the revisions. To insure an interpretation consistent with that discussion and the intent of the proponents, we wish to add a few words to the Committee report regarding these important provisions.

Section 122: Nondiscrimination Provision

A. Background

Section 122 of the current law forbids discrimination on account of race, color, sex, or national origin in any program or activity funded by shared revenues which is conducted by a State government or unit of local government. Under the Act, the Secretary is authorized to take appropriate administrative action to secure compliance (suspension, termination, or repayment of funds for violating the section) and to refer cases to the Attorney General for suit. In addition to such referrals the Act also provides independent authority for the Attorney General to initiate "pattern or practice" suits. The current statute gives private citizens a right of action against the United States or a recipient government for violating Section 122.[1]

The Committee received extensive testimony regarding Section 122, including an oversight report from the House Committee on the Judiciary's Subcommittee on Civil and Constitutional Rights.[2] The evidence disclosed a number of deficiencies in the effectiveness of that section: (1) the "fungibility" of shared revenues has permitted recipients to escape coverage by designating the funds as having been used in programs or activities where discrimination does not exist while designating the use of their own "freed-up" funds in programs or activities which are discriminatory; (2) the Office of Revenue Sharing and the Secretary of the Treasury have inadequately enforced the anti-discrimination provision by failing to process citizen complaints efficiently, to conduct adequate compliance reviews, to monitor compliance agreements, and to take any administrative action to suspend, terminate, or seek repayment of funds;[3] (3) the Department of Justice has failed to meet its responsibilities under the Act, including its general authority to monitor the compliance program of the Office of Revenue Sharing; and (4) the private remedies under the Act are insufficient, especially the lack of a provision allowing the award of attorney fees to prevailing private litigants and the lack of complainant involvement in complaint processing.

---

[1] See, e.g., *U.S. v. City of Chicago*, 395 F. Supp. 329 (N.D. Ill.), *aff'd* 525 F. 2d 695 (7th Cir. 1975).

[2] *The Civil Rights Aspects of General Revenue Sharing*, Nov. 1975, the findings of which are adopted and incorporated by reference.

In light of this evidence, the Committee determined that Section 122 should be amended to strengthen the non-discrimination provisions.[4] The purposes of the revision are to improve enforcement at the Federal level, to provide better coordination among federal, state, and local civil rights agencies, to insure that recipients will not be subject to conflicting enforcement standards, and to increase the participation of citizen-complainants in the enforcement process. With these goals in mind, the Committee adopted the following changes in Section 122.

B. Amendments

1. *Scope of section.*—The present law prohibits discrimination on the basis of race, color, national origin, or sex in any program or activity funded in whole or in part by shared revenues. The revised section would add age,[4a] handicapped status,[5] and religion as proscribed grounds for exclusion.[6] Because of the fungible nature of shared rev-

---

[3] Since the passage of the Act, the Secretary has never suspended shared revenues for a civil rights violation. Even when the Secretary had evidence of such a violation in Chicago, he still refused to suspend funds until ordered to do so by the federal court. See *U.S. v. City of Chicago, supra.* The Secretary has suspended funds for other violations of the Act, such as a recipient's failure to file a Planned Use Report.

[4] In revising Section 122 and adding Sections 124 and 125, the Committee adopted an amendment offered by Mr. Drinan (as amended by Ms. Jordan) to Section 9 of H.R. 13367. The final language tracks the Drinan amendment in relevant part.

[4a] This provision is similar to the provisions of the Age Discrimination Act of 1975. That Act prohibits "unreasonable" age discrimination in programs and activities receiving Federal financial assistance, including revenue sharing funds. The Committee intends that its amendment to the Revenue Sharing Act be considered a separate and independent statutory right that age discrimination not be practiced by governments receiving revenue sharing funds. It is important that the Committee amendment be interpreted in this manner, rather than be viewed strictly as an endorsement of the Congress' actions in the 1975 Age Discrimination Act. Unlike the 1975 Act, the Committee bill would prohibit age discrimination in all activities or programs of revenue sharing recipients, rather than merely in those programs and activities receiving revenue sharing funds. As indicated above, the Committee adopted this approach in its bill because of the serious problem of the fungibility of funds. Also, unlike the 1975 Act, the Committee measure establishes more detailed and automatic suspension and termination procedures, and does not delay effectiveness of the provision until January 1, 1979. Because of these significant distinctions, in terms of the broadness of the prohibition and the remedies provided, it is imperative that the Committee bill not be subject to a limited or narrow interpretation based on the 1975 Age Discrimination Act. Rather, the Committee bill and the 1975 legislation are to be viewed as independnet yet complementary measures. Both seek to insure the elimination of unreasonable age discrimination which is federally financed, but they nevertheless establish different approaches to the overall prohibition as well as to the enforcement mechanism. The Committee intends that through cooperation agreements (discussed hereinafter) the various Departments responsible for enforcement under the two laws will coordinate, to the greatest extent possible, those enforcement efforts.

[5] The Architectural Barriers Act of 1968 requires that all Federal buildings and federally-assisted projects be barrier-free for purposes of achieving accessibility to the handicapped. The Committee intends that its broadening of the nondiscrimination prohibition to protect the handicapped be similarly interpreted to forbid recipient governments from constructing buildings and other facilities which do not have special accommodations for the handicapped.

[6] The revision specifies that the general prohibitions be interpreted in accordance with certain existing anti-discrimination laws so that unformity is achieved, and that current standards at least are applied. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Lau v. Nichols*, 414 U.S. 563 (1974); *Hills v. Gautreaux*, 44 U.S.L.W. 4480 (U.S. April 20, 1976); *Hawkins v. Town of Shaw*, 461 F. 2d 1171 (5th Cir. 1972); *Gregory v. Litton Systems, Inc.*, 472 F. 2d 631 (9th Cir. 1972); *Brennan v. J. M. Fields, Inc.*, 488 F. 2d 443 (5th Cir. 1973), *cert. denied*, 419 U.S. 881 (1974); *U.S. v. City of Black Jack*, 508 F. 2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975); *Hodgson v. First Federal Savings and Loan Association of Broward County*, 455 F. 2d 818 (5th Cir. 1972); and *Adams v. Richardson*, 480 F. 2d 1159 (D.C. Cir. 1973).

enues, the amendment also removes the restriction limiting the nondiscrimination provision to programs or activities "funded in whole or in part" by shared revenues. Under the amendment, it is presumed that all activities of a recipient are funded with shared revenues.

There may be circumstances, however rare, when a recipient may be able to demonstrate, contrary to the presumption, that shared revenues were not used in the program or activity in which the alleged discrimination occurred. The revised Section 122 gives such a recipient the opportunity to make that showing. In view of the fungibility problem and the "special danger of deception" [7] inherent in accounting for the expenditure of shared revenues in specific programs or activities, the exception requires a "clear and convincing" standard of proof.

2. *Enforcement mechanism.*—The current law commits Federal enforcement to the total discretion of the Secretary of the Treasury and the Attorney General. In light of the hearing record demonstrating the unwillingness to exercise that discretion to secure the rights under Section 122, the revised section provides a more certain enforcement scheme. It also seeks to improve coordination among Federal, state, and local civil rights agencies.

(a) Secretary of the Treasury: The central feature of the revision is a trigger mechanism which determines when the Secretary will begin compliance proceedings by sending appropriate notices to the non-complying recipients. Such notification will be triggered under two circumstances: (1) when a federal or state court or administrative agency, after notice and opportunity to be heard, makes a finding of discrimination (on the basis of race, color, religion, sex, national origin, age, or handicapped status); [8] and (2) when the Secretary, after affording the recipient an opportunity to make a documentary submission, makes an initial determination of noncompliance based on his own investigation.

After notification, the recipient has 90 days to end the discrimination and take whatever affirmative steps are necessary to conform its practices to the law. If the recipient believes it has not violated Section 122, it may request a hearing on the merits which the Secretary is required to initiate (but not necessarily complete) within 30 days of the request. At that hearing the recipient may raise any defense available under law, including the contention that the shared revenues were not used in the program or activity in which the alleged discrimination occurred.

In advane of the hearing on the merits, the recipient may also request a preliminary hearing before an administrative law judge when the notification to the recipient is based on the Secretary's initial determination of non-compliance.[9] Such a preliminary hearing must be requested within 30 days of the notification of non-compliance and must be completed within the 90 day "grace" period. If the recipient demonstrates that it is likely to prevail on the merits at a subsequent full hearing, the administrative judge is authorized to order a deferral of a fund suspension which would otherwise automatically occur at the conclusion of the 90 days if compliance is not achieved.[10]

---

[7] McCormick, *On Evidence* (1972) at 798.

[8] Ordinarily the complainant or the other agency will bring such findings to the attention of the Secretary. Under the revision, however, the Secretary also has an affirmative obligation to uncover discrimination findings that are published in law reporters, legal journals, newspapers, and other publications, and to begin the compliance process on his own initiative. If recipients have not, by the effective date of these amendments, corrected practices already found to be discriminatory, the Secretary is expected to begin compliance proceedings by notifying such jurisdictions of their non-compliance status.

[9] When notification is triggered by a finding of a Federal or state court or administrative agency, there is no need for such a preliminary hearing because the recipient has already been afforded an opportunity on the merits.

At the end of the 90 days, the payment of shared revenues is automatically suspended if a compliance agreement has not been signed, or if compliance itself has not been achieved, or if an administrative judge has not entered an appropriate order.[11] The suspension then remains in effect for a period of 120 days, or 30 days after the conclusion of a hearing on the merits. Within that period of time, the Secretary is obligated to make a final determination of compliance or non-compliance. If insufficient evidence of non-compliance is presented to the Secretary, then the suspension is lifted and fund payments resume. If non-compliance is found, the funds are terminated, the Attorney General is notified, and the Secretary has the additional option of seeking repayment of Federal monies previously paid under the Act.[12] After termination, the funds due that government would be returned to the general treasury. Such government could, of course, seek reinstatement into the program if it achieved full compliance with the Act.

(b) Attorney General: Under present law, the Attorney General is authorized to initiate legal action against any recipient which is engaged in a "pattern or practice" of discrimination in violation of the Act.[13] That authority is continued under the revision. The Attorney General is given express authority to seek suspension, termination, or repayment of shared revenues, allowing the Attorney General to achieve in court what the Secretary may do administratively.[14]

The amended section gives the Attorney General added responsibility to monitor the civil rights compliance activities of the Office of Revenue Sharing at Treasury. Under Executive Order 11764, the Attorney General already exercises that authority with respect to all other Federal agencies which dispense Federal funds, including the prescription of appropriate "standards and procedures regarding the implementation of title VI." Because Treasury has taken the position that revenue sharing is not a title VI program, it is necessary to codify the principles of Executive Order 11764 for revenue sharing purposes. Thus, the amended Section 122 would require the Attorney General, among other things, to approve compliance agreements for the purpose of insuring uniformity of Federal standards. This is intended to benefit both complainants and recipients.

---

[10] The preliminary administrative hearing is akin to a judicial hearing for a preliminary injunction and the same standards for obtaining such preliminary releief are to apply. See *Chance* v. *Board of Examiners*, 458 F. 2d 1167 (2d Cir. 1972).

[11] The suspension of funds applies only to a local government which is the subject of the notification from the Secretary. The payment of funds to other governments in the State or the State itself remains unaffected.

[12] Whether repayment would be sought by the Secretary would depend on the facts of each case. Undoubtedly repayment would be appropriate where the violation is particularly egregious or the recipient recalcitrant. In addition, where the money has already been used to build a facility which, for example, serves only one racial group or fails to provide adequate arrangements for the handicapped, a demand for repayment would be justified if the location or design of the structure could not be appropriately altered.

[13] The words "pattern or practice" are intended to have the same meaning each of the three times they appear in the revised section and are "not intended to be esoteric words of art." *U.S.* v. *West Peachtree Tenth Corp.*, 437 F. 2d 221, 227 (5th Cir. 1971). While embracing something more than an isolated or accidental instance of discrimination, the "number of (victims) actually turned away or discriminated against is not determinative." *Ibid.* Although a class action would always be a "pattern or practice," something less than a class suit would also qualify.

[14] Since the Secretary must suspend revenue sharing funds on the 45th day after the Attorney General files a law suit, the remedy of suspension ordinarily will not be needed in such litigation. If, however, a recipient obtains a preliminary injunction against suspension within those 45 days, the Attorney General might later consider it appropriate to seek suspension by moving to dissolve the injunction.

The amended Section 122 makes additional provision for coordinating the enforcement efforts of the Secretary and the Attorney General. In the revised section, the Secretary is required to suspend payment of shared revenues 45 days after the filing of a "pattern or practice" suit by the Attorney General against a recipient. The automatic suspension operates whether or not the complaint specifically alleges a violation of Section 122. The recipient, however, always has the right, within the first 45 days after filing, to obtain a preliminary injunction against the suspension of funds by proving, by clear and convincing evidence, that the program or activity alleged to be discriminatory does not utilize shared revenues. The Committee intends that this preliminary determination, if sought by a recipient, is to be made exclusively by the court. The Secretary's role under this section is purely ministerial.

3. *Citizen remedies.*—Under the revenue sharing statute and other antidiscrimination laws, private citizens or organizations representing their interests, may sue the United States or any recipient for using shared revenues in a discriminatory fashion.[15] Those rights are continued under the revised Section 122. A new Section 125 of the Act authorizes courts to award attorney fees in citizen law suits and authorizes the Attorney General to intervene when it is a case of general public importance.

As noted earlier, the hearing record also discloses serious shortcomings at the Office of Revenue Sharing in processing complaints of discrimination and monitoring compliance. A new section 124 would correct some of that maladministration by requiring the promulgation of regulations requiring strict time tables for complaint investigation and compliance reviews. In addition, the Secretary, at least 15 days before the effective date of any compliance agreement, would be required to forward a copy to the complainant for examination. The Secretary would also be required to forward copies of compliance reports within 15 days after receipt.

4. *Inter-agency cooperation agreements.*—To achieve greater efficiency in enforcement, the bill requires the Secretary to enter into cooperation agreements with appropriate Federal, State, and local agencies. Such agreements must detail the cooperative efforts to be undertaken, including the sharing of resources and personnel. They would also include procedures for notifying the Secretary whenever findings of discrimination are made or, in the case of the Attorney General, whenever a pattern or practice suit is filed against a recipient. Before approving such agreements, the Secretary must be satisfied that the effective participation in such a cooperative arrangement.

5. *Judicial review.*—If a recipient is aggrieved by a final determination of the Secretary under Section 122, judicial review may be sought pursuant to existing Section 143(c) of the Act. In accordance

---

[15] See discussion of Section 125, *infra*.

with the settled rule in administrative practice, only final judgments are appealable.

Section 124: Citizen Complaints and Compliance Reviews

The hearing record disclosed serious deficiencies in the procedures of the Office of Revenue Sharing for processing citizen complaints and conducting compliance reviews. These deficiencies applied to a whole range of citizen complaints, not only those involving allegations of discrimination. Similar deficiencies were uncovered respecting the ORS' conduct of compliance reviews to insure that the provisions of the Act are followed. A new section 124 would correct much of this maladministration by requiring the Secretary, by March 31, 1977, to promulgate rules and regulations establishing procedures and timetables to process citizen complaints and undertake compliance reviews.

Section 125: Private Civil Actions

Under the present Act, both Federal and state courts have recognized the right of citizens to bring civil actions against the United States or recipient governments to remedy violations of the statute.[16] That right of action is continued under this bill.[17] A new section 125 is added however to authorize the courts to award attorney fees to prevailing plaintiffs so that access to the courts is meaningful.[18] In *Alyeska Pipeline Service Corp.* v. *The Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court held that counsel fees cannot ordinarily be awarded without express congressional authorization. Therefore if citizens are to recover their attorney fees, this section is essential.[19]

It is expected that the court will apply the attorney fee provision in accordance with applicable Supreme Court and lower federal court standards. See *Newman* v. *Piggie Park Enterprises, Inc.* 390 U.S. 400 (1968); *Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974); *Parham* v. *Southwestern Bell Telephone Co.* 433 F.2d 421 (8th Cir. 1970); *Lea* v. *Cone Mills Corp.*, 438 F.2d 86 (4th Cir. 1971); and *Aspira of New York, Inc.* v. *Board of Education of the City of New York*, 65 F.R.D. 541 (S.D.N.Y. 1975).

Furthermore, Section 125 would authorize the Attorney General, as a matter of right, to intervene in any private action brought "to enforce compliance with any provision of this Act." See 42 U.S.C. 2000h-2; *Spangler* v. *United States*, 415 F.2d 1242 (9th Cir. 1969).

---

[16] See, e.g., *Mathews* v. *Massell*, 356 F. Supp. 291 (N.D. Ga. 1973); *U.S.* v. *City of Chicago*, 395 F. Supp. 329 (N.D. Ill.), *aff'd* 525 F. 2d 695 (7th Cir. 1975); *Mackey* v. *McDonald*, 255 Ark. 978, 504 S.W. 2d 726 (Ark. Sup. Ct. 1974); *Yovetich* v. *McClintock*, —— Mont. ——, 526 P. 2d 999 (Mont. Sup. Ct. 1974); *Schreiber* v. *Lugar*, 518 F. 2d 1099 (7th Cir. 1975). To the extent the *Schreiber* case bars private suits in Federal court for jurisdictional reasons, it is disapproved.

[17] During consideration of H.R. 13367, the Committee struck as superfluous and unnecessary language regarding "standing" and "relief" in private civil actions. Courts already recognize the right of citizens to sue for violations of the Act and to obtain appropriate relief, including suspension, termination, or repayment of funds. *U.S.* v. *City of Chicago*, *supra*. The Committee also struck language requiring the exhaustion of administrative remedies before private suits can be brought.

[18] Allowing attorney fees only to prevailing plaintiffs tracks certain provisions of existing law. See 15 U.S.C. 15; 29 U.S.C. 216(b); 45 U.S.C. 153(p); 47 U.S.C. 206; 49 U.S.C. 16(2); 18 U.S.C. 1964(c).

[19] Since the United States will undoubtedly be a defendant from time to time the provision for counsel fees is intended as specific authorization for such fees within the meaning of 28 U.S.C. 2412.

The Attorney General must certify that the case "is of general public importance," and the application must be timely.

ROBERT F. DRINAN.
JOHN E. MOSS.
DANTE B. FASCELL.
WILLIAM S. MOORHEAD.
BENJAMIN S. ROSENTHAL.
JOHN CONYERS, Jr.
BELLA S. ABZUG.
CARDISS COLLINS.
MICHAEL HARRINGTON.

DISSENTING VIEWS OF HON. GLENN ENGLISH

In the months that the State and Local Fiscal Assistance Act Amendments have been considered by the Government Operations Committee, repeated efforts have surfaced to employ the revenue sharing concept as the vehicle for a variety of regulations and restrictions on the independence of local governing units.

The original concept of revenue sharing was based on the reasonable belief that state and local governments, which are much closer to the citizens than the federal bureaucracy, could better decide how to utilize tax revenues most wisely.

There is no justification whatsoever for the federal strings which are now attached to revenue sharing—strings which can only lead to greater federal intervention in local affairs, and greater local dependence on the federal bureaucracy.

I have watched with growing alarm as amendment after amendment was added to the State and Local Fiscal Assistance Act.

The Committee's bill, as reported, broadens the federal role in local governments through a stiffer nondiscrimination section, a complex set of citizen participation guidelines, and by a far more comprehensive audit procedure.

But these amendments, while extremely disturbing in their implications for the program, do not begin to offer the threat to smaller jurisdictions which is implicit in Section 9, the Rosenthal Amendment.

This measure, in the words of its proponents, "sets as a goal the preparation . . . of a plan for modernizing and revitalizing state and local government . . . (and) requires each state to submit . . . a report annually on the state's progress . . ." Its sponsors further describe it as "an important first step" towards increased centralization of governments.

In this amendment lies the threat of extinction for every small municipal government in America. Although the Rosenthal Amendment does not require immediate dismantling of small town governments, it clearly sets consolidation and "efficiency" as a federal goal.

It is incomprehensible to me that this Committee or this Congress might accept such a policy—especially as a section of the revenue sharing program.

I have faith in the ability of the citizens of local jurisdictions to elect a representative government which will use the federal funds it receives in a manner which benefits the community as a whole. But instead of strengthening local government the many amendments attached to the State and Local Fiscal Assistance Act by the Committee's bill would throw the door wide open for federal domination of smaller communities.

I believe that H.R. 13367 as reported negates the trust which the Congress quite properly placed in local governments. Its effect upon these small governments would be so far-reaching, and so dangerous, that I firmly believe it should not be passed in its present form.

GLENN ENGLISH.

ADDITIONAL VIEWS OF HON. ELLIOTT H. LEVITAS (CONCURRED IN BY HON. L. H. FOUNTAIN, HON. DON FUQUA, HON. RICHARDSON PREYER, HON. FRANK HORTON, HON. JOHN N. ERLENBORN, HON. CLARENCE J. BROWN, HON. PAUL N. McCLOSKEY, JR., HON. SAM STEIGER, HON. GARRY BROWN, HON. CHARLES THONE, HON. ALAN STEELMAN, HON. EDWIN B. FORSYTHE, HON. ROBERT W. KASTEN, JR., AND HON. WILLIS D. GRADISON, JR.)

We support the continuation of the State and Local Fiscal Assistance Act, better known as the "General Revenue Sharing" program. The bill repored by this Committee makes many significant improvements in the program in the areas of citizen participation, reporting requirements and eliminating discrimination. We have done away with the restrictive categories in which revenue sharing funds had to be spent and, by doing so, have more fully implemented the concept on which revenue sharing is based, that is, letting State and local elected officials, who are close to the people, have the decision-making power to determine the most effective means for meeting their own community needs, which they know best.

Unfortunately, this Committee has, in one most significant instance, taken a giant step backwards. We refer to the amendment offered by Congressman Rosenthal which was adopted, on reconsideration, by a one vote margin in Committee and which we strongly oppose. It now apears in the bill as Section 9. An amendment will be offered on the floor to strike it.

The amendment requires that each State government prepare and develop a "master plan" and "timetable" for "modernizing" and "revitalizing" State and local governments. It further spells out the criteria which the States may use in developing their master plan, and requires the subcommission by the Scretary of Treasury of annual reports to Congress on their progress in meeting these goals. The criteria include, but are not limited to:

Easing the restrictions on the borrowing and taxing powers of local governments;

Liberalizing municipal annexation of unincorporated areas;

Authorizing city-council consolidation or transfers of specified functions between municipalities and counties;

Authorizing municipalities to exercise extraterritorial planning, zoning and subdivision control over unincorporated areas not subject to effective county control;

Developing minimum State standards for services at the State and local level; and

Reducing the number of local governments too small to provide efficient administration possessing inadequate fiscal resources.

The Rosenthal amendment is a death-dealing blow to the whole concept of a federal system of government. It is clearly the first step at letting some bureaucrat in Washington impose his ideas of "modern" and "revitalized" local and State government on the 50 States and the 37,000 local governments across the nation.

The amendment is described as "permissive" in nature, but its proponents further call it ". . . an important first step." A first step is necessarily followed by a second step, and then more steps until we reach a junction in the road which this Committee, in reporting reenactment of general revenue sharing, never intended to follow. In this "first" step we are *admonishing* the State and local governments. Will our next step be to *require* them, and then to *administer* a modernization and revitalization plan stamped out by Washington? Will the distribution of revenue sharing funds be tied to the efforts of State and local governments to comply with the master plan?

Is the federal government itself, after all, the model of efficiency and modernization that we are asking of State and local governments through this amendment? Perhaps we should apply the criteria set forth in the Rosenthal amendment to ourselves first before we point a finger, albeit advisory, at our State and local governments. "Physician, heal thyself."

Some of the criteria set forth in this amendment, such as improving local tax bases, authorizing intergovernmental contracts, etc., may be worthy of consideration and desirable ends in and of themselves. However, each of these may be desirable, only if initiated by the State and local government in this country what is an improvement for them in modernizing their governmental structure. If the constituents of these States and local jurisdictions don't like the way things are run, let them send the message.

The general revenue sharing program is not the proper vehicle to implant every Member's ideas of what is improved local government. In April, last year, the General Accounting Office issued a report which concluded that the general revenue sharing program was not the vehicle to bring about or even encourage "modernization" of local governments. In the appendix to that GAO report, entitled "Revenue Sharing and Local Government Modernization," Daniel J. Elazar of the Center for the Study of Federalism at Temple University states:

> . . . it would be both infeasible and inappropriate to amend the Revenue Sharing Act to provide inducements for modernization. In part, this is because it is unclear precisely what modernization involves these days. Beyond that, the political and administrative problems of establishing a single federally enforceable pattern are enormous and likely to be counter-productive. Moreover, the value judgments that must be made before such a plan could be enacted into legislation are very great indeed. One of the great values of federalism is the possibility it offers for diversity and experimentation. Both exist in great measure in the United States today and any actions that might reduce either deserve long and careful consideration. Finally, congressional action to attach serious

> conditions to general revenue sharing would by any standards be a radical departure from the original premises of the revenue sharing idea and would change the character of revenue sharing beyond recognition.

Our system of government is a federal system. The states and their subdivisions are part of that system. This Rosenthal amendment charts a new course in the federal-state-local relationship. If the Rosenthal amendment is not deleted, we will undermine the entire Constitutional concept of federalism. The Rosenthal amendment is at best a dangerous precedent.

Some local governmental structures have been in existence longer than even our federal structure. Many of them operate with a level of representation and a record of achievements deserving of our envy. Yet the Rosenthal amendment suggests that these governments adopt new ways of handling community needs, even though they may have been successfully dealt with for generations.

We believe in the precepts on which general revenue sharing is based. It is a straightforward approach which recognizes the ability of elected State and local government officials to identify and resolve their own problems. It restores tax revenues to local officials, and expresses our confidence in their ability to use these funds wisely. The Rosenthal amendment cuts into the trust we have affirmed in local officials and jeopardizes the basic concept of general revenue sharing.

The cost of developing a master plan and the subsequent implementation of it, dilutes the purpose of these funds for community services and could in the long run exceed the amount of total federal dollars derived, in addition to the legal threat it poses to our Constitutional federal system of government.

By adopting an amendment to delete Section 9, the House of Representatives will reaffirm its belief in the federal system and its support of the concept behind general revenue sharing. The dollars that State and local governments would receive could not be worth the cost of converting our States into provinces and our local governments into administrative precincts molded and run by a powerful central government in Washington. That would be the end of our federal system.

Elliott H. Levitas.
L. H. Fountain.
Don Fuqua.
Richardson Preyer.
Frank Horton.
John N. Erlenborn.
Clarence J. Brown.
Paul N. McCloskey, Jr.
Sam Steiger.
Garry Brown.
Charles Thone.
Alan Steelman.
Edwin B. Forsythe.
Robert W. Kasten, Jr.
Willis D. Gradison, Jr.

ADDITIONAL VIEWS OF HON. FRANK HORTON, HON. JOHN N. ERLENBORN, HON. JOHN W. WYDLER, HON. CLARENCE J. BROWN, HON. PAUL N. McCLOSKEY, JR., HON. SAM STEIGER, HON. CHARLES THONE, HON. ALAN STEELMAN, HON. JOEL PRITCHARD, HON. EDWIN B. FORSYTHE, ROBERT W. KASTEN, JR., HON. WILLIS D. GRADISON, JR., AND HON. GARRY BROWN

When the State and Local Fiscal Assistance Act of 1972 was signed into law, government officials from towns, cities, counties, and States heralded its enactment as the most significant change in Federal-State-local relations since the beginning of the New Deal.

During the nearly five years of the program, $30.2 billion has been distributed to 39,000 units of government. The funds made available under this program, with a minimum of restriction, have reduced the increasing pressure on State and local governments' budgets.

On Thursday, May 6, 1976, the Full Government Operations Committee approved a bill to extend this program for 3¾ years. The proposal contains some excellent provisions including an entitlement mechanism for funding revenue sharing and a long-term authorization of 3¾ years.

However, the bill also includes some provisions which are alien to the concept of General Revenue Sharing; burdensome in the requirements they impose on State and local governments; and contrary to the structure of a Federal system of government.

The Rosenthal amendment

Central to the purposes of General Revenue Sharing, is the goal of providing fiscal assistance to State and local governments without the encumbrances of traditional categorical assistance. One amendment approved by the Committee would add a restriction which will inevitably lead to a conversion of revenue sharing into a bureaucratic nightmare. This is the Rosenthal "Modernization of Government Amendment."

The Rosenthal Amendment would have each State government prepare and develop a master plan and timetable for modernizing State and local government. But the master plan is to be designed according to Washington-defined goals as outlined in the subsections (c) (d) and (e) of the amendment.

The Rosenthal Amendment also directs the Governor of each State to submit the proposed master plan to the State legislature, and to the chief executive officer and legislative body of each county government, township government and other units of local governments.

The responses of these governments are to be compiled and submitted to the Secretary of the Treasury on an annual basis who in turn is supposed to submit an annual "progress" report to the Congress.

This is bureaucratic red tape at its worst. The number of reports generated by the Rosenthal Amendment will place additional burdens on all levels of government WITHOUT any demonstrable benefit.

The standards for modernization established in the amendment include such laudable goals as "... substantially improving the effectiveness, economy and equity of State and local government." By what standards are effectiveness, economy and equity measured? The standards for the design of State and local governments are the province of their constituencies.

We oppose the creation of another self-perpetuating Federal bureaucracy to pass judgment on these non-Federal concerns.

Reporting requirements

The reporting requirements now imposed on recipient governments are a good example of how both the Subcommittee and the Full Committee have loaded down the program with requirements without looking at the implications of these requirements for the governments that must administer the program. Reporting requirements for any program should be designed to meet the following needs:

1. To inform citizens of the expected arrival of revenue sharing funds and to prepare them to participate if they so desire in the allocation of these resources;
2. To inform the Treasury and Congress of how recipient governments have chosen to spend the money; and
3. To provide some basis for ascertaining whether recipient governments have allocated funds in compliance with the law.

These three purposes strongly suggest that the reporting requirements of the Bill represent the collection of information for information's sake.

Specifically, it is not necessary for Congress or the Treasury to collect Proposed Use Reports. Actual Use Reports are enough. Proposed Use Reports serve the important purpose of preparing citizens for participation in the local budget process, but because of their tenuous nature, such reports are of little use to the Federal officials.

Unless a compelling purpose can be identified, why should we require Federal employees to receive, read, and categorize 39,000 Planned Use Reports ranging in complexity from a few pages for small localities, to many volumes for States and large cities and counties.

The requirement of the Bill to automatically send copies of the Actual Use Report to each of the Governor's offices is another good example of unnecessary reporting. This provision assumes that all Governors wish to receive such reports and would do something useful with these reports after they receive them. Such reports should be available to Governors only upon request.

The Full Committee added an additional and unnecessary record keeping provision that requires all 39,000 recipient governments to identify particular items in their budgets funded by revenue sharing. The only useful purpose of this provision is to put recipient governments on notice that they must strictly account for the expenditure of these funds.

This strict accounting would assist recipient governments in countering nondiscrimination suits by helping to meet the requirements of clear and convincing evidence of the uses chosen for revenue sharing funds. Adding this requirement to the bill, however, conflicts with positions supposedly taken by both the Subcommittee and the Full Committee that revenue sharing funds are by their very nature fungible. Under this view, no amount of accounting will help to separate sharing funds from other tax revenues. As a consequence, the requirement to identify with great precision the use of revenue sharing funds will prove to be another example of a meaningless Federal requirement.

Until now the reporting of proposed and actual use of revenue sharing funds was done at the time recipient governments received notice from Treasury of the arrival of funds. This allocation of funds could occur at any time in a local government's fiscal year. The bill, as written, would tie reporting and citizen participation requirements to the local budget process. Local governments must allocate revenue sharing funds at the same time they allocate their own resources. While this objective is laudable, the proponents of this change have failed to account for the fact that 94 percent (see Exhibit I) of the local governments of this country have budget cycles different from that of the Federal government.

Unless over 35,000 recipient governments change their fiscal cycles to correspond with the Federal fiscal year, which is neither reasonable nor desirable, it will not be possible for these governments to comply in good faith with this provision.

If the requirement is not changed, these governments will have to resort to accounting tricks and gimmicks to meet the letter of the law. This result flies in the face of the Committee's intent to improve meaningful citizen participation, planning and accountability for the use of revenue sharing funds.

EXHIBIT I

SUMMARY OF LOCAL GOVERNMENT FISCAL YEARS

	Number of governments	Percent of total
Fiscal year ending:		
Jan. 31	14	*
Feb. 29	1,034	2.7
Mar. 31	7,114	19.1
Apr. 30	1,267	3.3
May 31	618	1.6
June 30	6,885	18.5
Sept. 30	2,252	6.0
Nov. 30	102	.2
Dec. 31	17,993	48.3
Total	37,279	99.7

Note: Main point—94 percent of all local governments have fiscal years ending at a date different from that of the Federal Government. 85 percent of all local governments have fiscal years ending at 1 of the following dates: Mar. 31, June 30, Dec. 31.

Source: Bureau of Census.

Auditing requirements

The Committee bill requires an audit of the entire recipient government's finances rather than just those programs funded in whole or in part by revenue sharing. Few major local governments conduct audits of *all* their finances each year. Many programs are audited on a three or four year cycle. To require that a major city like New York or Chicago completely audit all of its finances yearly would be an expensive proposition requiring tremendous audit staffs producing thick documents that may hardly change much from year to year.

The Committee has not focused on what is to be done with this audit information. Clearly, this requirement will yield much more than is necessary to determine compliance with provisions of the Act. This extra information is compiled at great cost which will serve no purpose except to increase the burden of Federal paperwork.

The Committee Bill requires that these financial audits be in accordance with generally accepted auditing standards. Yet, it is not at all clear that such standards exist in operational form for State and local governments.

Proponents of these audit standards argue that such audits will prevent local governments from bankruptcy similar to what befell New York City. The proponents fail to address the fact that audit reports usually fail to confront the really important questions that pertain to the fiscal solvency of State and local government. There are many different ways to estimate revenues and expenses. Playing with these techniques is the way some State and local governments bring their budgets into "balance." Audit reports tend not to focus on the important questions of whether a budget is actually in balance, whether estimating techniques are valid, and whether the steps necessary to achieve or maintain balance of revenues and expenses have been taken On the contrary, audit reports tend to focus only on whether funds have been expended in the manner appropriated. As a consequence, the important information promised by the author of this amendment may never materialize.

Nondiscrimination provisions

Since the early 1960's, the Congress has repeatedly enacted civil rights legislation designed to bring the full power of Federal enforcement mechanisms to bear on guaranteeing constitutionally protected rights for all American citizens. Beginning with the historic Civil Rights Act of 1964, the Congress has reaffirmed its commitment to strong civil rights enforcement through the Public Accommodations Act, the Equal Employment Act and the Voting Rights Act.

When markup of the General Revenue Sharing extension proposals began in earnest early in 1976, a bipartisan effort was started to provide an improved nondiscrimination provision commensurate with the scope of the General Revenue Sharing program. Legitimate criticism had been lodged against the Office of Revenue Sharing for its lack of initiative in enforcing the nondiscrimination provision of the existing law.

The basic goal of the Subcommittee was to "send the Office a Revenue Sharing a message" that effective civil rights enforcement was a principal goal of the Congress in its extension of the revenue sharing program.

The provisions which emerged from the Subcommittee on Intergovernmental Relations and Human Resources were extremely comprehensive in that they extended the nondiscrimination protections to all activities of local government unless it could be proved by clear and convincing evidence that revenue sharing funds were not used in the activity where the discrimination was alleged.

The provision contained procedural safeguards for recipient governments but simultaneously removed discretion from the Office of Revenue Sharing on the timing and degree of fund suspension and/or termination.

When the Full Committee on Government Operations met on May 6, 1976, an alternative was approved that eliminated many of the procedural safeguards in the Subcommittee provisions.

Principal among these modifications is a provision permitting the suspension of revenue sharing funds on the basis of the filing of a civil action alleging discrimination on the part of a recipient government by the Attorney General of the United States WHETHER OR NOT THE USE OF REVENUE SHARING FUNDS IS EVEN ALLEGED. This provision places in perpetual doubt the continuation of revenue sharing funds to each recipient government. The continuing threat of suspension would have a devastating impact on local budget planning and would place in continual jeopardy the delivery of services to those most in need.

Another provision of the nondiscrimination section modified in the Full Committee requires the Attorney General to participate in all compliance agreements developed by the Department of Treasury and the Office of Revenue Sharing. This change was made despite the Department of Justice clearly stating that such an arrangement would be an administrative nightmare which would undercut litigation the Justice Department might already be pursuing.

Finally, the Committee agreed to a provision on private citizen suits which permits the awarding of attorney's fees only to the prevailing plaintiff, to enforce any provision of the Act.

The issue of the propriety of awarding attorney's fees is secondary. The central question is whether the United States government shall be in the position of defendant or plaintiff in civil rights enforcement cases. If the United States becomes a defendant in every civil rights case involving revenue sharing funds, its capacity to enforce laws will be severely limited. The Justice Department's enforcement powers would be greatly strengthened if such private suits were authorized against State or local governments, but not the Federal government. The role of the Justice Department should be the enforcement of the civil rights provision through litigation. The present provissions on private citizen suits would severely limit that capacity.

These modifications approved by the Full Committee will not improve the operations of the revenue sharing program, nor will they enhance the civil rights enforcement record of the Office of Revenue Sharing *vis a vis* the provisions approved by the Subcommittee. On the contrary, they could substantially reduce the number of Justice Department lawsuits since any discrimination alleged at the State or local level will trigger suspension of revenue sharing funds within 45 days.

Extension of the Davis-Bacon Act

Under P.L. 92-512, the original General Revenue Sharing Act, the Davis-Bacon wage standards were to be applied to any construction project of a recipient government which received 25 percent or more of the funds for that project from General Revenue Sharing funds.

The provision approved by the Committee would apply to the Davis-Bacon provisions to all local construction projects, regardless of the percentage of revenue sharing funds used.

Advocates for this modification justified their position by arguing that some local governments had used 24 percent revenue sharing funds in construction to avoid the Davis-Bacon wage requirements. While there has been little in the way of documentation of this charge, the Committee agreed to eliminate the 25 percent requirement.

The manner in which the Davis-Bacon Act is administered by the Department of Labor is likely to drive the cost of construction beyond the reach of many small and medium size local governments.

Studies by the General Accounting Office have shown that Davis-Bacon Act adds from 5 to 15 percent to the cost of construction.[1] A Murray L. Wiedenbaum, "Government Mandated Price Increases-A construction projejct of a Veterans Hospital was increased by 22 percent as a result of Davis-Bacon and a public housing project in Florida by 6 percent.[2]

This issue for revenue sharing is not the validity of Davis-Bacon, but the impact of using revenue sharing as a vehicle for extending Federal regulations and controls over all facets of State and local government activities.

Over half of the 39,000 recipient governments receive less than $7,000 annually in revenue sharing funds. In countless cases, extending the applicability of Davis-Bacon standards to all construction projects by these governments would add more in construction costs than the government receives in revenue sharing.

Supplemental fiscal assistance

The Supplemental Fiscal Assistance Provision allocates $150 million along the lines specified in the Fascell formula, H.R. 10319.

Under the bill, as written, the supplemental funds come from the current formula. The amount of money authorized for the current or standard formula was the annualized amount of the last entitlement period. This supplemental appropriation is achieved by reducing this funding level by $150 million. This provision has the effect of reducing the standard revenue sharing program by $150 million, thus reducing the standard revenue sharing allocation to *each* recipient government.

The formula includes a poverty factor which is achieved by substituting the percentage of people below the poverty line in place of the per capita income figure that is used in the current formula.

Major problems with this supplemental fiscal assistance

1. The decision to allocate an extra "pot" of money to State and local governments to recognize particular needs is laudable. It is questionable as to whether the Fascell formula is the best formula for doing this.

The question is: Which needs should be addressed that are not being addressed under the current law? The Committee has never really focused on this question. The formula for allocating this Supplemental Fiscal Assistance does not address many of the commonly recognized problems of State and local government.

---

[1] See Murray L. Weidenbaum, "Government Mandated Price Increases—A Neglected Aspect of Inflation," A.E.I. 1975, p. 62.

[2] *Ibid.*, p. 62.

For example:

a. The formula does not benefit the large urban industrial States that have been impacted so severely by the recession.

b. The formula does not favor States that have higher than average unemployment rates. (Exhibit II)

c. Many cities in dire financial straits would receive no supplemental funds at all. Other local governments with no apparent need get an increase in their allocations.

For example: Yonkers, New York which almost went bankrupt earlier this year would receive no additional funds under the supplemental add-on provision. Yet Vail, Colorado which already has a high per capita allocation would receive a 16 percent increase in funds.

The Supplemental Assistance Provision does not recognize that the responsibility for the provision of social services varies from government to government. In many cases, there are four different levels of government: State, county, townships and municipalities. Only one level may have primary responsibilities for the provision of social services. Yet, the proposal would dump money on all four levels regardless of their ability to use the funds.

Any supplement to the revenue sharing program that professes to apply money to social needs cannot afford to overlook the fact that only certain levels of government have the responsibility of providing these services.

In summary, applying this Supplemental Fiscal Assistance reduces the allocation to the current revenue sharing program to a level below the current funding level of 6.65 annually (Entitlement Period 7). This $150 million is then reallocated on the basis of a formula that has not been the subject of much debate and may have serious distributional inequities.

EXHIBIT I.

IMPACT OF SUPPLEMENTAL FISCAL ASSISTANCE PROVISION ON STATES WITH UNEMPLOYMENT RATES HIGHER THAN THE NATIONAL AVERAGE (NATIONAL AVERAGE 8.3, DECEMBER 1975)

	State and local government losses				State and local government gains		
	Unemployment rate	Dollar loss (thousands)	Percent reduction		Unemployment rate	Dollar gain (thousands)	Percent gain
Michigan	12.5	1,824	0.7	Massachusetts	11.8	1,250	0.6
Rhode Island	12.4	334	1.2	Oregon	10.4	2,034	2.9
Florida	11.7	1,438	.7	Alaska	9.6	300	3.1
Connecticut	10.5	548	.6	South Carolina	9.5	1,817	1.9
New York	10.3	765	.1	Delaware	9.5	615	3.1
New Jersey	9.9	2,274	1.1	Georgia	8.7	3,116	2.2
Maine	9.7	758	1.8	Montana	8.4	(1)	(2)
Vermont	9.5	349	1.7	Alabama	8.4	1,250	1.2
Arizona	9.4	1,284	1.0	Total gain		10,422	
California	9.4	13,407	1.9				
Pennsylvania	8.8	556	.2				
Washington	8.7	1,790	1.8				
Total loss		25,327					

---

[1] Less than 1,000

[2] Less than 1 percent

Note main point.—The supplementary fiscal assistance provision does not benefit States that have been severely impacted by the recession. Of the 20 States with higher than average unemployment rates, 12 of them fail to benefit from this supplementary assistance. This supplementary provision would deny them some $25,000,000 that would accrue to them if the $150,000,000 were allocated under the current formula.

Conclusion

The legislative process requires that differing points of view come together in order to achieve positive results. But, when the proposals of some become so contrary to the purposes of an individual piece of legislation as to violate its basic intent, these proposals can no longer be the basis of agreement and compromise. The amendments to revenue sharing extension bill discussed in these additional views represent such violations of the program's intent.

Perhaps, some of these amendments are well intentioned. However, taken individually or together, they represent the conversion of General Revenue Sharing into a burdensome and convoluted program guaranteed to strangle the lifeblood from most units of State and local government by reducing or eliminating the benefits that should flow from Federal revenue sharing assistance. Neither the interest groups supporting these amendments, nor the opponents of General Revenue Sharing who have supported them in the name of reform, are well served by such actions.

We, the undersigned, supported the Committee Bill because of our strong commitment to the General Revenue Sharing concept, and because it is urgent that Congress act to extend this program. We are confident that the Full House of Representatvies will see fit to modify the injurious provisions so that revenue sharing will continue to exist as a model of Federal cooperation—not of Federal interference—with State and local governments and their citizens.

Frank Horton.
John N. Erlenborn.
John W. Wydler.
Clarence J. Brown.
Paul McCloskey, Jr.
Sam Steiger.
Charles Thone.
Alan Steelman.
Joel Pritchard.
Edwin B. Forsythe.
Robert W. Kasten, Jr.
Willis D. Gradison, Jr.
Garry Brown.

ADDITIONAL VIEWS OF HON. JOHN N. ERLENBORN

The Davis-Bacon Act was originally designed to insure the integrity of union wage scales in the construction industry where a threat of non-union employment existed. It is, therefore, ironic, that a decision made by the Full Committee extending Davis-Bacon to all local construction projects will result in destroying the integrity of the General Revenue Sharing program.

When revenue sharing was originally enacted, a provision of the law required the application of Davis-Bacon wage standards where 25 percent of a local construction project was financed by revenue sharing funds. This provision, agreed to after extensive negotiations with the interested unions, was to protect the union wage scales where substantial Federal funds were involved.

There were many Members of Congress at the time of the original enactment who expressed concern about this provision. I believe it was a valid compromise and adhere to that view today.

The action taken by the full Committee, however, is a potential disaster for many local governments. In a recent study published by The Wharton School of Finance of the University of Pennsylvania, Professor Armand J. Thiebolt, Jr. strongly criticized any applicability of Davis-Bacon. He wrote in part:

> Without question, the greatest disadvantage of Davis-Bacon is its cost. Exclusive of residual, multiplying, or escalating effects, Davis-Bacon costs more to operate than the whole federal judiciary establishment, and perhaps more to run than the entire legislative branch of government. A very conservative estimate would be one-quarter to one-half of a billion dollars per year in administration and excess construction costs over what a free market would provide. To this estimate must be added the inflationary impact which Davis-Bacon creates by favoring union rates, which then spread from government construction to private construction and hence establish an escalating superminimum wage rate for the industry. Including these effects might well bring the total annual cost of the Davis-Bacon Act to $1.5 billion.[1]

Whether Davis-Bacon standards are applicable to all local construction projects is critical to continuation of many small and medium sized governments in the program.

Over 50 percent of the 39,000 recipients of revenue sharing funds receive less than $7,000. On an average $100,000 capital construction project by a local community, an increase in cost in excess of 7 percent would eliminate any financial benefit of the program.

Studies by the General Accounting Office have shown that the Davis-Bacon Act adds from 5 to 15 percent to the cost of Federal construction.

---

[1] Labor Relations and Public Policy Series, "The Davis-Bacon Act," 1975, p. 170.

Professor Yale Brozen of the University of Chicago has reported that in many instances the U.S. Department of Labor, which sets the "minimum scale" of union pay for Federal projects, uses figures that are higher than those prevailing in the area where the work is being done. In 50 percent of the cases, the Labor Department used union rates from a country other than that in which the work was being done.[2]

Such excessive upward pressure on construction costs can only force many units of local government out of the revenue sharing program. The impact of this on the economy of those areas which would be forced to refuse revenue sharing funds can only serve to drive down pay scales as the governments cut construction projects and other capital expenditures.

The Davis-Bacon provision in the existing law is sufficiently strong to protect the rights of union pay scales. It should be preserved in the bill to which the House of Representatives ultimately agrees.

JOHN N. ERLENBORN.

---

[2] Brozen, Yale, "The Law That Boomeranged," *Nation's Business*, April, 1974, pp. 71–72.

○